

1 GIRARD H. TURNER

2 INSTRUCTIONS TO THE WITNESS

3
4 Please read your deposition over
5 carefully before you sign it. You should
6 make all your changes on the attached
7 errata sheet.

8 After making any changes which you
9 have noted on the attached errata sheet,
10 sign your name on the Deponent's
11 Certificate and date it. You are signing
12 it subject to the changes you have made on
13 the errata sheet, which will be attached to
14 the deposition.

15 Return the attached errata sheet
16 and Deponent's Certificate to American
17 Court Reporting Service, Read & Sign
18 Department, P. O. Box 12765, Birmingham,
19 Alabama 35202.

20 According to the rules of Civil
21 Procedure, you will have thirty (30) days
22 from the date you receive this deposition
23 in which to read it, sign it, and return

Page 4

DEPONENT'S CERTIFICATE

I, GIRARD H. TURNER, the witness herein, have read the transcript of my testimony and the same is true and correct, to the best of my knowledge. Any corrections and or additions, if any, are listed separately.

WITNESS

DATE _____

Sworn to and subscribed before me,
this the ____ day of _____, 2007, to
certify my hand and seal of office.

NOTARY PUBLIC

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ERRATA SHEET

PAGE	LINE	EXPLANATION
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

CIVIL ACTION NUMBER:
CY-06-BE-1486-E

PATRICIA ANNE COTTON,
Plaintiff(s),

V5.

ALT, INC., WESTOWER COMMUNICATIONS,
INC., CINGULAR WIRELESS, LLC, et al.,
Defendants(s).

DEPOSITION TESTIMONY OF:
GIRARD H. TURNER

AUGUST 23, 2007
9:13 A.M.

COURT REPORTER:
Timothy R. Lovelady, CSR, CLR, CMRS

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STIPULATIONS

1 IT IS STIPULATED AND AGREED by and
2 between the parties through their
3 respective counsel that the deposition of
4 GIRARD H. TURNER may be taken before
5 Timothy R. Lovelady, CSR, CLR, CMRS, and
6 Notary Public for the State of Alabama at
7 Large, at the offices of Wiggins, Childs,
8 Quinn & Pantazis, The Kress Building, 301
9 19th Street North, Birmingham, Alabama
10 35203 on the 23rd day of August, 2007,
11 commencing at approximately 9:13 a.m.

12 IT IS FURTHER STIPULATED AND
13 AGREED that the signature to and the
14 reading of the deposition by the witness is
15 not waived, the deposition to have the same
16 force and effect as if full compliance had
17 been had with all laws and rules of Court
18 relating to the taking of depositions.

19 IT IS FURTHER STIPULATED AND
20 AGREED that it shall not be necessary for
21 any objections to be made by counsel as to
22 any questions except as to form or leading
23

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1 questions, and that counsel for the parties
2 may make objections and assign grounds at
3 the time of trial, or at the time said
4 deposition is offered in evidence, or prior
5 thereto.

6 In accordance with Rule 5(d) of
7 The Alabama Rules of Civil Procedure, as
8 amended, effective May 15, 1988, I, Timothy
9 R. Lovelady, am hereby delivering to J.
10 MITCHELL FROST, JR., the original
11 transcript of the oral testimony taken on
12 the 23rd day of August, 2007, along with
13 exhibits.

14 Please be advised that this is the
15 same and not retained by the Court
16 Reporter, nor filed with the Court.
17
18
19
20
21
22
23

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APPEARANCES

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1 I, Timothy R. Lovelady, CSR, CLR,
2 CMRS, of Birmingham, Alabama, and Notary
3 Public for the State of Alabama at Large,
4 acting as Commissioner, certify that on
5 this date as provided by Rule 30 of the
6 Alabama Rules of Civil Procedure, and the
7 foregoing stipulations of counsel, there
8 came before me at the offices of Wiggins,
9 Childs, Quinn & Pantazis, The Kress
10 Building, 301 19th Street North,
11 Birmingham, Alabama 35203, on the 23rd day
12 of August, 2007, commencing at or about
13 9:13 a.m., GIRARD H. TURNER, witness in the
14 above cause, for oral examination,
15 whereupon, the following proceedings were
16 had:

17
18 GIRARD H. TUNER,
19 having been first duly sworn, was examined
20 and testified as follows:

21
22 COURT REPORTER: Would you like
23 to read and sign your deposition?

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1 Q. We're going to do some
2 preliminary matters until two other lawyers
3 get here. I assume you have seen this
4 notice to take your deposition?

5 A. Yes, sir.

6 Q. All right. Let me mark it as
7 Exhibit 1 to your deposition.

8 (WHEREUPON, a document was
9 marked as Defendant's Exhibit Number 1 and
10 is attached to the original transcript.)

11 Q. In the deposition notice, we
12 requested that you bring a variety of
13 documents and things to your deposition.
14 Have you read that list?

15 A. Yes, sir.

16 Q. Is that a "yes"?

17 A. Yes, sir.

18 Q. All right. And have you brought
19 some documents and things with you?

20 A. I have.

21 Q. All right. Why don't we start
22 with number one. It says a copy of your
23 resume and your licenses.

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1 THE WITNESS: Yes, sir.

2 THE COURT REPORTER: Other than
3 that, usual stipulations?

4 MR. JOHNSON: Other than that,
5 that's fine.

6 EXAMINATION BY MR. FROST:

7 Q. Mr. Turner, my name is Mitch
8 Frost. I was introduced to you just a few
9 minutes ago.

10 A. Yes, sir.

11 Q. I understand you're here to
12 offer some expert testimony in this case;
13 is that correct?

14 A. That's correct.

15 Q. What is your full name, sir?

16 A. Girard H. Turner.

17 Q. And where do you live?

18 A. 1204 West Lynches,
19 L-y-n-c-h-e-s, River Road, Lamar, South
20 Carolina 29069.

21 Q. How long have you lived at that
22 address?

23 A. Approximately five years.

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1 A. I will produce to you the entire
2 CV packet, which includes my resume.

3 Q. You're saying this is what you
4 called a CV packet?

5 A. Yes, sir.

6 Q. Okay. And this is your resume;
7 is that right?

8 A. That is correct.

9 Q. Okay. And then these are copies
10 of your current licenses; is that right?

11 A. That is correct. Now, I will
12 explain one thing to you. On a lot of the
13 licenses may be expired dates. I do
14 maintain them all current. But if I were
15 to -- I'd be changing that page every other
16 day or two almost, I'm always getting
17 something in the mail saying I need to
18 renew it, recertify, this, that and the
19 other. The only one that is not current is
20 the one with the Texas worker's comp, and
21 I've let it expire and I do not intend to
22 renew it.

23 Q. Okay. I was going to ask you

Page 18

1 that at some point in the deposition. When
2 I reviewed the initial information you had
3 sent to us, it appeared to me that all of
4 them had expired. So what you're telling
5 me is you've maintained all of them except
6 your Texas workmen's comp?

7 A. That is correct.

8 Q. Even though these show them to
9 be expired, they're actually current?

10 A. That is correct. And I've
11 probably got a lot of the documentation in
12 my wallet to verify it.

13 Q. All right. And what is this
14 that you've got in your resume packet?

15 A. That was a job description I had
16 when I was a compliance officer with the --
17 a safety engineer with the U.S. Department
18 of Labor, commonly known as OSHA, OSHA.

19 Q. All right. I'm going to mark
20 collectively as Exhibit 2, which you have
21 identified as your resume packet, we'll
22 keep that together.

23 (WHEREUPON, a document was

Page 20

1 (Off-the-record discussion.)

2 Q. Are these additional copies for
3 everybody else?

4 A. Right.

5 MR. JOHNSON: Yeah.

6 (WHEREUPON, a document was
7 marked as Defendant's Exhibit Number 4 and
8 is attached to the original transcript.)

9 Q. All right. You were describing
10 to me what these individual exhibits within
11 your resume packet are, and I have
12 separated one of them. You had a document
13 entitled "Training Conducted" and a
14 document entitled "Civil Action List". You
15 had them combined. I have separated them,
16 okay?

17 (WHEREUPON, a document was
18 marked as Defendant's Exhibit Number 5 and
19 is attached to the original transcript.)

20 A. That's fine with me.

21 Q. And I have tabbed Training
22 Conducted as Exhibit 4 and Civil Action
23 List as Exhibit 5. Can you tell me then

Page 19

1 marked as Defendant's Exhibit Number 2 and
2 is attached to the original transcript.)

3 Q. And then I'm going to mark as
4 Exhibit 3 within your resume packet this
5 document here. And if you will, explain to
6 me again what Exhibit 3 is.

7 (WHEREUPON, a document was
8 marked as Defendant's Exhibit Number 3 and
9 is attached to the original transcript.)

10 A. It was a job description of my
11 job as a safety engineer when I was
12 employed with the U.S. Department of Labor,
13 commonly known as Occupational Safety and
14 Health Administration, OSHA, or OSHA.

15 Q. All right. And what is this
16 document?

17 A. That is a list of everything
18 that I have done since I have left OSHA,
19 whether it be training that I have
20 conducted, audits that I have conducted or
21 civil cases that I have been involved with
22 in which I have given sworn testimony,
23 whether it be at deposition or at trial.

Page 21

1 what Exhibit 4 is?

2 A. That is training that I have
3 conducted in industry or associations since
4 I have left the Department of Labor.

5 Q. All right. And then what is
6 Exhibit 5 then?

7 A. That is a list of civil cases
8 that I have been involved with, whether it
9 be at deposition or at trial, since I have
10 left the Department of Labor.

11 Q. Do you have a list of cases in
12 which you did give a deposition?

13 A. They're included in that list.

14 Q. I had looked at this list and I
15 don't see any designation on here as to
16 whether a deposition was given or not. Are
17 you telling me that you can tell me which
18 ones you did give a deposition in?

19 A. There's a deposition in all of
20 them, but all of them did not go to trial.
21 The ones that I actually went to trial, I
22 tried to designate that it did, in fact, go
23 to trial. Let me see if I can give you an

6 (Pages 18 to 21)

Page 22

1 example, that on the first page on the
2 Keith versus MVT Services, at the bottom of
3 the page you will notice that I've got the
4 date and the trial right beside the date.

5 Q. All right. So where you have
6 the word "trial" written on that Keith
7 versus MVT, that indicates you actually
8 testified at trial?

9 A. That's correct.

10 Q. But then wherever there's that
11 designation that says "trial", you would
12 have testified at trial; is that right?

13 A. That's correct.

14 Q. Then all the other ones that are
15 listed, you've actually given depositions
16 in?

17 A. Well, I actually gave a
18 deposition in the Keith versus MVT before
19 trial, before trial.

20 Q. All right. Well, what I'm
21 trying to get at is there's multiple pages
22 here of cases you've been involved in. I'm
23 trying to find out did you give a

Page 24

1 of it, but he's got -- well, here, use
2 mine. Sorry. And he's reading from number
3 two.

4 A. Yes, sir. It's on the credenza
5 at the end of the room.

6 Q. Do you mind getting it all so we
7 can just look at what it?

8 MR. JOHNSON: Well, I'll get it
9 for him. Where do you want it, Mitch?

10 MR. FROST: I guess we can just
11 set it next to him and he can take it out
12 and show us.

13 Q. (By Mr. Frost:) Mr. Turner, I'm
14 not going to mark all of -- the majority of
15 this is exhibits. You can just tell me
16 what it is and then you can set it aside
17 and we can just have an understanding of
18 what all it is you have looked at.

19 A. Okay. What is on top and what's
20 probably the most handy and probably the
21 best way to handle it, unless you've got
22 other suggestions, is a deposition of
23 Robert Marcus Camp.

Page 23

1 deposition in every one of these that's
2 listed on Exhibit 5?

3 A. As far as I recall, yes, sir.

4 Q. Is that everything that you
5 would consider responsive to number one on
6 the request?

7 A. Yes, sir.

8 Q. Okay. All right. Number two,
9 we asked for any photographs, video tapes,
10 charts, diagrams, drawings, electronic or
11 computer-generated data, or other
12 documentary evidence by whatever nature or
13 designation known that you have reviewed,
14 considered, compiled or prepared in regard
15 with regard to your evaluations,
16 inspections or opinions. Do you have any
17 of that information here today?

18 MR. JOHNSON: Where's your
19 notice? You may want to read along with
20 him.

21 THE WITNESS: You've got my
22 notice.

23 MR. JOHNSON: I've got your copy

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1 Q. All right. Did you read the
2 entire deposition of Mr. Camp?

3 A. Yes, sir.

4 Q. All right.

5 A. The deposition of Mr. Adam
6 Waterman.

7 Q. Did you read that entire
8 deposition?

9 A. I did. The deposition of Joshua
10 Cook.

11 Q. Did you read that entire
12 deposition?

13 A. I did. The deposition
14 transcript of Mr. Drollinger, Dustin
15 Drollinger.

16 Q. Yes, sir. Did you read that
17 entire deposition?

18 A. I did. The deposition of Mr.
19 Eric Davis.

20 Q. And did you read that entire
21 deposition?

22 A. I did. And the deposition of
23 Jeff Silva.

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1 Q. Did you read that entire
2 deposition?
3 A. I did. The deposition of Jason
4 Cook.
5 Q. Did you read that entire
6 deposition?
7 A. I did. The deposition of
8 Nathaniel Ross.
9 Q. Did you read that entire
10 deposition?
11 A. I did. The deposition of
12 Charles Randall Wheeler.
13 Q. Did you read that entire
14 deposition?
15 A. I did. The deposition of
16 Matthew Deadmond.
17 Q. Did you read that entire
18 deposition?
19 A. I did. I also reviewed a group
20 of CDs that had been provided by counsel,
21 and I present those to you.
22 Q. Are these all photographs?
23 A. Not all of them, no, sir.

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1 Q. All right. Well, what is this
2 one?
3 A. Those were photographs.
4 Q. All right. Let me mark as
5 Exhibit 6, it appears to be a CD. It's
6 labeled "Cotton, taken by Clay at Frost's
7 office 2-2-07, Rope pics." Is that your
8 understanding what that is labeled?
9 (WHEREUPON, a document was
10 marked as Defendant's Exhibit Number 6 and
11 is attached to the original transcript.)
12 A. That's correct.
13 Q. Okay. Did you print any
14 photographs off from this CD?
15 A. No, sir.
16 Q. Let me show you Defendant's
17 Exhibit 7. And this says "Cotton versus
18 Beta, produced by WestTower." Can you tell
19 me what that is?
20 (WHEREUPON, a document was
21 marked as Defendant's Exhibit Number 7 and
22 is attached to the original transcript.)
23 A. I don't recall at the moment.

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1 Q. All right. Let me show you
2 Defendant's Exhibit 8. This says "Cotton
3 photos and maps, 2-28-2007." Do you know
4 what that is?
5 (WHEREUPON, a document was
6 marked as Defendant's Exhibit Number 8 and
7 is attached to the original transcript.)
8 A. The photos is what I recall.
9 Q. Do you know what the maps are?
10 A. I don't recall it.
11 Q. Have you ever looked at any
12 maps?
13 A. Seems like I did, but I don't
14 recall it.
15 Q. Did you print any maps off of
16 Exhibit 8?
17 A. No, sir.
18 MR. FROST: Do y'all have a way
19 to look at these during this deposition?
20 MR. JOHNSON: I can get a laptop
21 down here if you want to look at them.
22 Would that be all right?
23 MR. FROST: Yeah. This is just

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1 so fancy I thought I'd push a button and
2 something would come out of the ceiling or
3 out of the walls.
4 MR. JOHNSON: I wish. Do you
5 need to look at them right now?
6 MR. FROST: No, that's fine.
7 MR. JOHNSON: Good.
8 Q. Let me show you Defendant's
9 Exhibit 9. It says "Training Forms." It
10 looks like it says "CD #1." Have you
11 looked at that?
12 (WHEREUPON, a document was
13 marked as Defendant's Exhibit Number 9 and
14 is attached to the original transcript.)
15 A. I've looked at it. Seems like
16 it was some forms that was used in a
17 training program.
18 Q. Do you know what kind of forms?
19 A. I don't recall.
20 Q. Did they play a part in any way
21 in your opinions you're going to offer
22 today?
23 A. No, sir.

8 (Pages 26 to 29)

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1 Q. All right. Let me show you
2 Defendant's Exhibit 10. It says "Training
3 Presentation, CD #2." Did you look at
4 this?

5 (WHEREUPON, a document was
6 marked as Defendant's Exhibit Number 10 and
7 is attached to the original transcript.)

8 A. I did.

9 Q. Do you remember anything about
10 it?

11 A. I think it was something to do
12 with the Train Corn presentations that were
13 made on the training for the tower
14 climbing.

15 Q. Does that play any part in your
16 opinions you're offering today?

17 A. Not really.

18 Q. Well, explain "not really" to
19 me. Does it play a part in any way in your
20 opinions you're offering today?

21 A. It only tells me -- or what the
22 training program consisted of, and I do not
23 have any criticism of it.

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1 Q. All right. Let me show you
2 Defendant's Exhibit Number 11. And this CD
3 is labeled American Business Review
4 'Accidents'." Do you know what that's
5 about?

6 (WHEREUPON, a document was
7 marked as Defendant's Exhibit Number 11 and
8 is attached to the original transcript.)

9 A. I don't recall it.

10 Q. All right. Now, it says at the
11 bottom CD 3 & 4. We've got a 1, a 2. Was
12 this combined or --

13 MR. JOHNSON: I don't know.

14 MR. THOMASON: Mitch, what I
15 think the numbers refer to is the way that
16 they were produced by ALT, to us from ALT,
17 either first or second supplemental
18 discovery responses. There were five
19 discs.

20 MR. FROST: Oh, and y'all just
21 put them on the CDs?

22 MR. JOHNSON: Well, I think we
23 took the CDs that were given to us and just

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1 copied them and then sent them on to Mr.
2 Turner.

3 MR. FROST: Oh, okay.

4 MR. JOHNSON: I think that's the
5 mode of production.

6 Q. (By Mr. Frost:) But, Mr.
7 Turner, you don't recall what's on
8 Defendant's Exhibit 11?

9 A. Not really.

10 Q. Do you know whether it played a
11 part in the opinions you're going to offer
12 today?

13 A. Apparently not.

14 Q. All right. Now, Defendant's
15 Exhibit 12 says "CD #5", and it's entitled
16 "Tower Safety". Do you know what is on
17 this CD?

18 (WHEREUPON, a document was
19 marked as Defendant's Exhibit Number 12 and
20 is attached to the original transcript.)

21 A. That was, here again, going back
22 to the training that was provided on that
23 job site, which I don't really have any

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1 criticism of.

2 Q. All right. Let me show you what
3 I've marked as Defendant's Exhibit 13, and
4 it's entitled "Monopole, CD #6". Do you
5 know what's contained on that CD?

6 (WHEREUPON, a document was
7 marked as Defendant's Exhibit Number 13 and
8 is attached to the original transcript.)

9 A. If I recall correctly, it was
10 some documentation of photographs that was
11 really two fenced-in areas on that job
12 site. One was a monopole and the other one
13 was the subject tower in which the antenna
14 was being replaced.

15 Q. Does Exhibit 13 play any part in
16 the opinions you're going to offer today?

17 A. I would say no.

18 Q. Let me show you Defendant's
19 Exhibit 14. It's entitled "DBI Trailer, CD
20 #7". Do you know what's on that CD?

21 (WHEREUPON, a document was
22 marked as Defendant's Exhibit Number 14 and
23 is attached to the original transcript.)

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1 A. I don't recall.

2 Q. So I assume, then, that it does
3 not play a part in your opinions as well?

4 A. Apparently not.

5 Q. And let me show you Defendant's
6 Exhibit 15. It is entitled "Cotton,
7 Produced by ALT, ALT Photos." Do you know
8 what's on this CD?

9 (WHEREUPON, a document was
10 marked as Defendant's Exhibit Number 15 and
11 is attached to the original transcript.)

12 A. I remember a bunch of pictures.
13 Other than that, that's about all I can
14 tell you.

15 Q. Okay. Have you selected any
16 particular photograph that you deem
17 important or which you're going to use in
18 offering your opinions today?

19 A. Not that I recall.

20 Q. All right. What else do you
21 have with you?

22 A. A copy of the ALT safety manual.

23 Q. All right. Is there anything in

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1 as a short line lowering the antenna and
2 which ultimately broke was not an
3 appropriate rope to be used for that
4 purpose?

5 A. Absolutely.

6 Q. I just asked that because I did
7 not see that on your designation. All
8 right. Well, let me mark that as an
9 exhibit then since that is part of your
10 opinions. I'll make that Exhibit 16.

11 (WHEREUPON, a document was
12 marked as Defendant's Exhibit Number 16 and
13 is attached to the original transcript.)

14 Q. What else do we have, sir? And
15 was that the only thing within the manual
16 that you are relying upon with regard to
17 your opinions?

18 A. The best that I recall, yes,
19 sir.

20 Q. All right.

21 A. This is a document, or a group
22 of papers or whatever, that appears to me
23 is the BetaCom/OSHA report. An OSHA

Page 35

1 the ALT safety manual that you considered
2 or relied upon in offering your opinions
3 today?

4 A. On page 17 of that document,
5 it's got a section that addresses synthetic
6 rope, and it's only two items. In item two
7 I would like to read into the record. "Use
8 the proper rope for the job. Rope used in
9 rigging and for lifelines must be of higher
10 quality and higher mechanical properties
11 than that used for material tie downs and
12 short lines."

13 Q. Does that play a part in your
14 opinions you're offering today?

15 A. Yes, sir.

16 Q. In what way?

17 A. In the fact that the ALT knew
18 that there's a difference in ropes and the
19 quality of ropes. And the rope that was
20 the subject in this case did not meet the
21 criteria of higher quality.

22 Q. Are you going to offer an
23 opinion here today that the rope being used

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1 citation is included in it.

2 Q. All right. Is there anything
3 within that group of documents that you
4 relied upon in any way in offering your
5 opinions?

6 A. Yes, sir.

7 Q. And can you tell me what that
8 is?

9 A. The OSHA citation itself where
10 OSHA had cited BetaCom is a serious item of
11 the 100(a): "Employees were not protected
12 by protective helmets while working in
13 areas where possible danger of head injury
14 from impact, or from falling or flying
15 objects, or from electrical shock and
16 burns."

17 And on March the 10th of 2006,
18 employees were working where overhead
19 hazards were present, were not wearing head
20 protection resulting in a proposed penalty
21 of forty-nine hundred dollars.

22 Q. Okay. Now, you disagree with
23 that citation, don't you?

10 (Pages 34 to 37)

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1 A. That, I do.

2 Q. Okay. All right. Let me mark
3 this group of documents collectively as
4 Exhibit 17 to your deposition.

5 (WHEREUPON, a document was
6 marked as Defendant's Exhibit Number 17 and
7 is attached to the original transcript.)

8 Q. What else do you have, sir?

9 A. A copy of the Handbook for
10 Riggers, which I have an actual copy in my
11 library at home of the printed matter that
12 was produced by the publisher. And that is
13 only a photocopy of one of those. But that
14 was provided to me by counsel, but I really
15 didn't need it, I had a copy already.

16 Q. All right. And is there
17 anything about the Handbook for Riggers
18 that you've relied upon in offering your
19 opinions?

20 A. Only the fact it was the
21 renowned recognized standard of the
22 industry that I've never heard any
23 criticism on about changing slings and

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1 fiber ropes and et cetera, whatever you
2 would use in the rigging, whether it be for
3 a crane or whatever for lifting purposes.

4 Q. Well, is there anything actually
5 in the Handbook for Riggers that you will
6 cite to in offering your opinions?

7 A. Not that I recall.

8 Q. All right.

9 A. But it does, in fact, address
10 synthetic roping in that book.

11 Q. All right. What do we have
12 next, sir?

13 A. I think this is the plaintiffs
14 exhibits on Silva, the deposition. And it
15 includes some of the things that we've
16 already talked about.

17 Q. All right. Did you review all
18 those exhibits?

19 A. I did.

20 Q. Is there anything in those
21 exhibits, other than what we've already
22 talked about, that you would be relying
23 upon in offering your opinions?

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1 A. Included in here I notice a copy
2 of the OSHA citation for ALT, which I have
3 under a separate cover. So it's almost
4 duplicating some of the other things that
5 we will address otherwise.

6 Q. Sure. Okay. Well, let's go
7 through the other things then and then we
8 can come back to that if there's anything
9 in addition to it.

10 A. Here is a copy of the OSHA
11 citation to ALT, including a copy of the --
12 well, it's a copy of the OSHA report, which
13 includes a copy of the actual citation to
14 ALT. It's a serious condition, Citation 1,
15 Item 1, a violation of 29 CFR
16 1926.251(a)(1). "Rigging equipment for
17 material handling was not inspected prior
18 to use on each shift and as necessary
19 during its use to ensure that it was safe.
20 Defective rigging equipment was not removed
21 from service. On or about March the 10th
22 of 2006, the rope was not inspected, nor
23 was the defective rope removed from

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1 service, resulting in a proposed penalty by
2 OSHA for twenty-eight hundred dollars."

3 Q. All right. Was that the initial
4 citation issued by OSHA?

5 A. Yes, sir.

6 Q. Do you know what the resulting
7 citation was?

8 A. It's my -- from what I recall,
9 the resulting citation was the same, the
10 penalty was only reduced.

11 Q. Is that what you recall?

12 A. That's what I recall.

13 Q. Do you know if the settlement
14 citation is in that group of documents you
15 have?

16 A. That was the amended citation, I
17 think, because there originally was quoted
18 -- I'm sorry. Let me back up.

19 In the informal settlement
20 agreement, it was amended to read "Rigging
21 equipment for material handling shall be
22 inspected prior to use on each shift and as
23 necessary during its use to ensure that it

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1 was safe to use. Defective rigging shall
2 be removed from service on or about March
3 the 10th of 2006."

4 Q. In fact, the amended citation
5 does not say that it was not inspected; is
6 that correct?

7 A. It indicates to me that there is
8 a violation, and they only put the date.
9 They did not go into the other verbiage.

10 Q. Yes, sir. All right. And I
11 assume that that OSHA citation for ALT, you
12 did consider in offering your opinions?

13 A. Yes, sir.

14 Q. All right. Let me mark that
15 then. That is Exhibit 18.

16 (WHEREUPON, a document was
17 marked as Defendant's Exhibit Number 18 and
18 is attached to the original transcript.)

19 Q. What's next, please, sir?

20 A. A group of exhibits to the
21 Waterman deposition that also include some
22 photographs, some of the same material
23 we've talked about as far as the rigging

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1 handbook and some tests I think he took
2 when he --

3 Q. Is there anything, in
4 particular, in this set of exhibits to Mr.
5 Waterman's deposition that you're relying
6 upon in offering your opinions that we've
7 not already talked about?

8 A. No, I don't think so.

9 Q. All right. A group of exhibits
10 from Mr. Cook's deposition, number one,
11 this is Josh Cook's deposition.

12 MR. JOHNSON: Yeah.

13 Q. (By Mr. Frost:) Is there
14 anything in that group of exhibits from
15 Josh Cook's deposition that you're relying
16 upon in offering your opinions that we have
17 not previously talked about?

18 A. There are some photographs.
19 There's also a copy of the tower safety
20 manual, which I think we are going to have
21 under a different label.

22 Q. All right.

23 A. But other than that, I don't

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1 know of anything.

2 Q. All right. Well, we'll get to
3 that, then, as you go through your
4 documents.

5 A. A group of photographs provided
6 by counsel that are actually in color. I
7 had seen, I think, all of these. I think,
8 all of these in the black and white are on
9 the floppies. But at least they gave me a
10 hard copy of it to take a look at.

11 Q. All right. Are you relying upon
12 any of these photographs in particular in
13 offering your opinions?

14 A. I think they just gave me an
15 understanding of the overall layout of the
16 job site.

17 Q. All right. What I'm asking you
18 is: In explaining your opinions to me
19 today, will you need to refer to any of
20 these in particular?

21 A. I hope not.

22 Q. All right.

23 MR. GANN: Have we marked those

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1 in any way? Do you mind marking them? He
2 said he used them in some respects.

3 MR. FROST: All right. Well,
4 I'm going to mark these. They are gem
5 clipped. I'm going to mark them
6 collectively as 19 and we'll say how many
7 there are here in just a second.

8 (WHEREUPON, a document was
9 marked as Defendant's Exhibit Number 19 and
10 is attached to the original transcript.)

11 MR. JOHNSON: For the record,
12 too, I handed him those yesterday. I'm not
13 a hundred percent sure if that is a
14 complete copy of the police photographs and
15 I'm guessing that's why you're counting, to
16 make sure, because if it's not let me make
17 sure I've got a complete set.

18 MR. FROST: How many are in the
19 police?

20 MR. JOHNSON: I thought there
21 were like forty. Oh, God, I don't
22 remember, forty.

23 MR. FROST: I don't remember

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1 either.

2 MR. THOMASON: I don't know.

3 MR. JOHNSON: No, I do know,
4 we've talked about this.5 MR. GANN: I'm counting
6 forty-nine.7 MR. JOHNSON: I think that's
8 right.9 Q. (By Mr. Frost:) What do you
10 have in front you now, sir?11 A. This is a request for production
12 from Defendant ALT Second Supplement to its
13 Responses to Plaintiff's First Set of
14 Request for Production. And then it
15 includes a lot of the other things that we
16 were just talking about, including some
17 photographs of the tower training manual,
18 the rigging manual, et cetera.19 Q. All right. Is there anything in
20 there that we have not already talked about
21 that you're going to use in offering your
22 opinions?

23 A. Not that I can recall at the

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1 moment.

2 Q. Okay. Well, we don't need that
3 then.4 A. This is a packet that was
5 provided by counsel and the Lexington
6 Insurance Company for ALT, and it gives the
7 limits and criteria.8 Q. Does the insurance policy in any
9 way play a part of your opinions you're
10 offering?11 A. No, no, sir. Defendant ALT's
12 Answers to Interrogatories and Request for
13 Production that was provided by counsel.14 Q. All right. Is there anything
15 within this document that you relied upon
16 in offering your opinions?

17 A. Not that I recall.

18 Q. All right.

19 A. Defendant ALT's First Supplement
20 to its Responses to Plaintiff's Request for
21 Production. This was also provided by
22 counsel.

23 Q. Anything within this particular

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1 document that you relied upon in offering
2 your opinions?3 A. Not that I recall. Defendant
4 ALT's Second Supplement to Response to
5 Plaintiff's First Set of Request For
6 Production, also provided by counsel.7 Q. Anything in that particular
8 document you relied upon in offering your
9 opinions?10 A. Not that I recall, sir.
11 Defendant WesTower's Answers to
12 Interrogatories and Request For Production
13 provided by counsel.14 Q. Anything in that particular
15 document you relied upon in offering your
16 opinions?17 A. Not that I recall. Defendant's
18 Initial Disclosures Pursuant to Rule 26.
19 And maybe you can explain that to me or to
20 the record better than I can.21 Q. All right. Is there anything in
22 that particular document you relied upon in
23 offering your opinions?

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1 A. Not that I recall.

2 Q. All right.

3 MR. JOHNSON: Mitch, just for a
4 point of clarification requested, it's been
5 a while since you asked the initial
6 question for him to bring in all these
7 documents. But are you asking him for his
8 whole file or for stuff that's responsive
9 to the notice?10 MR. FROST: Well, it's probably
11 quicker to just go through his whole file
12 and then we'll be answering all those
13 questions.14 MR. JOHNSON: Yeah. I was
15 curious what was your question? I've
16 forgotten it.17 MR. FROST: I think we went off
18 on that tangent, but I think it's probably
19 quicker to do this.20 MR. JOHNSON: Well, okay. Yeah.
21 All right.22 A. Responses of Crown Counsel South
23 to Plaintiff's Interrogatories and Request

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1 for the Production of Documents, also
2 provided by counsel.

3 Q. Is there anything within this
4 particular document that you relied upon in
5 offering your opinions?

6 A. Not really. I know in this
7 document was a copy of an accident
8 investigation by BetaCom. There was a copy
9 of the site plan for that job site, a
10 WestTower incident report as a result of
11 this mishap.

12 Q. And you read all those
13 documents?

14 A. I read them, yes, sir.

15 Q. Did they play a part in any way
16 in the opinions you're going to offer?

17 A. I don't recall any.

18 Q. And the next document, sir?

19 A. Defendant Cingular Wireless'
20 Response to Plaintiff's Request For
21 Production of Documents.

22 Q. Is there anything, in
23 particular, in that document that you

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1 be compelled with the Georgia law. And I
2 had not really made up my mind to this date
3 what the legality of that is, whether we're
4 being in the State of Alabama do we comply
5 with the Alabama law or the Georgia law.
6 And that question, in my mind, to this
7 point has not been resolved.

8 Q. Does that play a part in any way
9 in the opinions you're going to offer
10 against Cingular or any of the other
11 defendants?

12 A. It plays a part in whether I use
13 a Georgia code or an Alabama code.

14 Q. Okay. Well, let me mark that
15 then. And by that, you mean in your
16 initial expert disclosures you cited to an
17 Alabama code as opposed to a Georgia code;
18 is that right?

19 A. That's correct.

20 Q. Let me mark -- it's titled
21 Defendant Cingular Wireless' Responses to
22 Plaintiff's Request for Production of
23 Documents. I'm going to mark that as

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1 relied on in any way in offering your
2 opinions?

3 A. In this packet, there was a copy
4 of the agreement between NSORO, N-S-O-R-O,
5 and Cingular Wireless. It has an effective
6 date of 8-1-2004. And in there I noticed a
7 section that would be 3.5, Compliance with
8 Laws, "Supplier shall comply with all
9 applicable Federal, State, County and Local
10 rules, including without limitations, all
11 statutes, laws, ordinances, regulations and
12 codes (laws)." So from this I am relying
13 upon that that Cingular is trying to compel
14 the contractors to comply with all laws
15 without exception.

16 And I also notice in there that
17 on 3.13, there's a section titled
18 "Governing Law. This agreement and
19 performance hereunder shall be governed by
20 the laws of the State of Georgia exclusive
21 of its choice of laws provisions."

22 Now, from that I derived a
23 question, is this site located in Alabama

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1 Defendant's Exhibit 20.

2 (WHEREUPON, a document was
3 marked as Defendant's Exhibit Number 20 and
4 is attached to the original transcript.)

5 MR. JOHNSON: You're marking the
6 whole response, is that what you're
7 marking?

8 MR. FROST: Yeah, he's got a lot
9 of marks on there.

10 Q. (By Mr. Frost:) What do you
11 have next, sir?

12 A. I'm not sure I know how to
13 identify this one. The first page of this
14 group that is stapled together says "Daily
15 Work Report" by Josh Cook's name on it.
16 And it's on a WestTower job site in
17 Talladega.

18 Q. Is there anything about that
19 group of documents that you relied upon in
20 offering your opinions today?

21 A. Here again, this document has a
22 copy of the OSHA report, with the 1(b)
23 where they were citing the 29 CFR

14 (Pages 50 to 53)

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1 1926.251(a)(1) and it goes back to the
2 initial OSHA citation.

3 Q. Yes, sir. And we've already
4 discussed that as being a part of your
5 opinions. Is there anything independent of
6 that within the document that you would be
7 relying on in offering your opinions?

8 A. Not that I recall.

9 Q. All right. Here's a photograph
10 that stands alone. I don't really
11 understand what document it came -- I don't
12 know what document it came off of.
13 Apparently, it was the last sheet or
14 something, but I don't know how to explain
15 it. Are you relying on this particular
16 black and white photograph in any way in
17 offering your opinions?

18 A. No, sir.

19 Q. All right.

20 A. Here's a copy of the Tower
21 Climbing Safety & Rescue safety program or
22 book that has been provided to me by
23 counsel.

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1 Q. Are you relying upon that book
2 in any way in offering your opinions?

3 A. Yes, sir.

4 Q. In what way?

5 A. On page 57 of that document,
6 it's titled "Tools and Equipment". And in
7 there it states "Before each use, all
8 equipment should be inspected for wear,
9 damage, and other deterioration. Defective
10 components shall be removed from service.
11 This actually should be done twice. First,
12 as you load it to be transported to the job
13 site and again at the site safety meeting
14 before you climb. This is not only a good
15 practice for your own safety but also an
16 OSHA regulation 29" -- I'm sorry, it just
17 says 1926.502 Subpart M, d(21).

18 And then again on there it says
19 "The ANSI standards state that each element
20 of the PFAS", which stands for personal
21 fall -- my mind went blank on me, arrest
22 systems, "be inspected prior to each use
23 and lists damage concerns as cuts, cracks,

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1 tears or abrasions, undue stretching,
2 overall deterioration, mildew, operational
3 defects, heat, corrosion, and springs or
4 snap-hooks that are defective or distorted.
5 Check for manufacturer's information, which
6 must be clearly attached to or provided
7 with any PFAS equipment. The ANSI
8 standards require that all such equipment
9 be indelibly printed or stamped onto the
10 device or a tag securely attached. This
11 marking must include the trademark or name
12 of the manufacturer, the model number of
13 the equipment and the date of the
14 manufacture. Special note: Always know
15 the Working Load Limit of any rigging
16 equipment, including safety rigging
17 (PFAS)."

18 That alone gives me the
19 knowledge from this training package that
20 you don't override a manufacturer's
21 recommendation, regardless of who, what,
22 where or when.

23 Q. All right. Let me mark that as

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1 Defendant's Exhibit 21.

2 (WHEREUPON, a document was
3 marked as Defendant's Exhibit Number 21 and
4 is attached to the original transcript.)

5 Q. What do you have next, sir?

6 A. I have reference material that
7 was not provided by counsel that I have on
8 my own. One is a copy of the OSHA law,
9 commonly known as the Public Law 91-596,
10 dated November the 5th -- December the 29th
11 of 1970.

12 MR. JOHNSON: These are copies
13 of it.

14 A. And I have brought you copies of
15 excerpts from this document.

16 Q. All right. And what your
17 counsel has just handed me, are these the
18 excerpts that you will be relying upon in
19 offering your opinions?

20 A. Absolutely.

21 Q. All right. Let me mark them
22 collectively as Defendant's Exhibit 22.

23 (WHEREUPON, a document was

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1 marked as Defendant's Exhibit Number 22 and
2 is attached to the original transcript.)

3 Q. And what do you have next, sir?

4 A. Next is the booklets that I have
5 brought out where those excerpts came from.
6 So I'm letting you know that I'm not trying
7 to pull something on you that we could
8 verify that it was a true copy from the
9 existing documents.

10 Q. Sure.

11 A. The same thing as the code book.
12 This one is dated July 1 of 1999. It's 29
13 CFR 1926, which is the OSHA construction
14 standards.

15 Q. All right, sir.

16 A. Those standards are identical.
17 That was a hard copy that it was easy for
18 me to reproduce. But I have also brought a
19 CD, which is a copy of everything that OSHA
20 had to offer on January of 2006, which
21 means these were the exact same documents
22 that were prevailing at the date of this
23 mishap. So there's been no change in them

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1 even though my hard copy is a 1999 date.
2 This would be an electronic device to show
3 that they were the same or identical as the
4 ones that I had produced in this packet.

5 Q. Let me just ask you then, is it
6 your understanding that what you have on
7 the 2006 CD, the regulations you're relying
8 upon in offering your opinions are
9 identical to Exhibit 22?

10 A. Right. And below it's got a
11 1999 date on it.

12 Q. Sure.

13 A. But I have verified that there
14 has not been a change.

15 Q. All right.

16 MR. JOHNSON: Exhibit 22 is not
17 1999, that's 1990.

18 MR. FROST: No, this is all of
19 them. He's got all of them.

20 MR. JOHNSON: Oh, excuse me.
21 Excuse me. All the way up through? I see.

22 MR. FROST: Right. He's got all
23 the ones he's relying on.

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1 THE WITNESS: See, these will
2 have the 1999 date on them.

3 MR. JOHNSON: I wasn't
4 listening.

5 A. I have been involved with
6 creating, writing, editing, advising,
7 whatever you want to call it, a safety
8 video produced by ERI, that is Educational
9 Resources, Inc. out of Lexington, South
10 Carolina. I have done many of these videos
11 over the years, but this one happens to be
12 under the name of High Impact Personal
13 Protective Equipment. And it has a number
14 associated with it of 9826.

15 In this video, it shows that a
16 hard hat has got a limit of forty foot
17 pounds. At the end of that video is also
18 my name as being a credit to the production
19 development of this video. And it only
20 verifies what -- is the same as what I'm
21 going to be testifying to here as far as
22 the limits of a hard hat.

23 Q. Is this the only copy you have

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1 of that?

2 A. That is correct. And I do not
3 own that copy, it is only on loan to me.
4 And there is some kind of a chip in this --
5 it's my understanding it's been told there
6 is some kind of chip or protective system
7 within that video that it is not to be
8 produced. And if it was reproduced, then
9 it could be verified as to who reproduced
10 it. And I will state to you if you want a
11 copy of it to go to the ERI to get you a
12 copy, but not to be reproduced from this
13 one.

14 MR. FROST: How do you gentlemen
15 suggest we mark this?

16 MR. JOHNSON: I think it's okay
17 to mark it if Mr. -- and let Mr. Turner
18 take it with him. But as far as getting
19 your own copy of it, I think you're going
20 to have either buy it or something from
21 what I understand. But if y'all want to
22 watch it today we can do that, too.

23 MR. FROST: Okay. I'll just

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1 mark it and then we can decide later.

2 Q. (By Mr. Frost:) You don't have
3 any problem with me marking it?

4 A. As long as you just mark the
5 case and not the product.

6 Q. Yes, sir. All right. That will
7 be Exhibit 23.

8 (WHEREUPON, a document was
9 marked as Defendant's Exhibit Number 23 and
10 is attached to the original transcript.)

11 Q. Have you ever been involved in
12 the creating or editing or participating in
13 the preparing of a video tape dealing with
14 rigging of towers and hoisting and lifting
15 of antennas, the type we have today?

16 A. Not that specific, no, sir.
17 I've been involved with some rigging for
18 general application regardless of what
19 industry it was used in.

20 Q. Have you done a video tape about
21 that?

22 A. I don't recall. I cannot -- I'd
23 hate to say, no, I haven't, when, in fact,

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1 upon in offering your opinions today?

2 A. I don't know that I relied upon
3 them because my opinions on this is not
4 really finalized. I've done some playing
5 around with it as far as the velocity of
6 the antenna as it struck Mr. Cotton. I've
7 just been curious to know some idea.

8 Of course, in physics you have
9 work under absolute scenarios of
10 conditions, such as a falling body in a
11 vacuum. We know that's the case out here.
12 Then, too, is the falling body we normally
13 think about as a sphere or a ball falling
14 so we don't have the resistance because of
15 the shape or size. It goes back to mass
16 with the laws of physics and Newton's law.

17 So in this case I have not
18 examined the antenna. I have not actually
19 had my hands on it. So therefore any
20 calculations I have to date would be
21 speculation and just as imperial (sic)
22 factors and not absolutes.

23 MR. JOHNSON: Empirical.

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1 I have. But I can't verify, I can't recall
2 whether I have or not.

3 Q. All right. What else do you
4 have with you?

5 A. I have a copy of a Modern
6 Technical Physics textbook, my advisor,
7 this is the one that I studied when I went
8 to college and I spent many hours of agony
9 in this book. This was copyrighted in 1966
10 and I understand I do have a copy of a
11 later edition that I've always marveled at
12 that I don't know that -- I don't know that
13 that one says which edition, but I know the
14 later edition is a third edition.

15 But I do have a copy of the
16 third edition of the same textbook, and I
17 often go back and compare notes between the
18 two and see if there's -- you don't change
19 physics. You may change the textbook, but
20 the laws of physics are going to remain the
21 same throughout.

22 Q. Is there anything in either one
23 of those textbooks you specifically relied

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1 THE WITNESS: Thank you.

2 Q. (By Mr. Frost:) Well, what have
3 you used those books for in any way in
4 offering your opinions?

5 A. I have made some calculations as
6 to what the velocity would be. And from
7 that, I have also taken some photo -- a
8 photocopy of some pages out of that book
9 when it's talking about the acceleration
10 distance and time, the velocity of fallen
11 bodies. And I think I have photocopied
12 three pages out of it.

13 Q. What was the purpose of your
14 doing calculations about the fall rate of
15 the antenna?

16 A. Because of the weight of the
17 antenna and the distance in which it fell,
18 I did some calculations to find out what
19 the impact would be as it hit Mr. Cotton.

20 Q. Would that -- did you do that in
21 relationship to your opinion that his
22 wearing a hard hat would not have mattered?

23 A. Absolutely.

17 (Pages 62 to 65)

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1 MR. FROST: Does anybody want to
2 mark those books as an exhibit or we'll
3 just get the name and title of them?

4 MR. GANN: I don't think we need
5 the book. We'll just get the title.

6 Q. (By Mr. Frost:) If you would
7 just read the full name and title and date
8 of edition on each of those books, please,
9 sir.

10 A. The textbook title is Modern
11 Technical Physics, the author is Beiser,
12 B-e-i-s-e-r. It is published by the
13 Addison Wesley Publishing Company out of
14 Reading, Massachusetts.

15 MR. JOHNSON: Arthur Beiser is
16 the name of the author, by the way.

17 THE WITNESS: Thank you.

18 MR. JOHNSON: Copyright 1966.

19 A. Correct. And there's a Library
20 of Congress catalog number, 66-10829. And
21 at that time there was apparently an office
22 or whatever, warehouse or whatever, for
23 Addison Wesley Publishing Company in

1 Edition. It is published by McGraw Hill,
2 and the author of that is Daniel Schaum,
3 S-c-h-a-u-m.

4 MR. JOHNSON: Are you looking
5 for the publication date?

6 A. There's a publication date.
7 This is the last one that I've got in here
8 is 1961, when it was copyrighted. In fact,
9 it says Sixth Edition, March of 1961
10 Reprinted. But I don't see a Library of
11 Congress number.

12 Q. And I understand the two books
13 and then this booklet or manual, you
14 maintain those at your home; is that right?

15 A. That's correct.

16 Q. So if we did need to get a copy
17 we could get one from you; is that right.

18 A. Absolutely.

19 Q. And what else do you have, sir?

20 MR. GANN: May I see that book
21 before you put it back? Thank you.

22 A. And, I did, in fact, copy the
23 excerpts from the cover the pages in there

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1 Atlanta.

2 Q. If you can just give us the same
3 information on the other book, please, sir.

4 A. The other one is titled Physics,
5 Third Edition, also by Beiser. And this is
6 under a Benjamin Cummings Publishing
7 Company, Inc. Also, Reading, Massachusetts
8 as well as other locations. It's
9 copyrighted in 1982.

10 Q. Is there a Library of Congress
11 number for it?

12 MR. JOHNSON: ISBN, that's the
13 Library of Congress number.

14 A. They have changed, I think, from
15 the Library of Congress number to the ISBN
16 0-8053-0381-2.

17 Q. All right. Thank you, sir. And
18 what else do you have?

19 A. Back when I was studying
20 physics, there was also a document of what
21 we call a study catalog, a soft back unit.
22 And it's Schaum's, S-c-h-a-u-m-'s, Theory
23 and Problems of College Physics, Sixth

1 of an example in Chapter 5 of force. I
2 think there's what, four pages of it in
3 here.

4 Q. And you have relied on these
5 particular pages in regard to your
6 opinions?

7 A. That is correct.

8 Q. All right. Let me mark that
9 excerpt from the College Physics Sixth
10 Edition as Exhibit 24.

11 (WHEREUPON, a document was
12 marked as Defendant's Exhibit Number 24 and
13 is attached to the original transcript.)

14 Q. And what else, do you have,
15 please, sir?

16 MR. GANN: Do you need to mark
17 his notes over there?

18 MR. FROST: I don't know if
19 we've gotten there yet.

20 A. The only other thing I've got is
21 a copy of my working file.

22 Q. All right. Well, let's go
23 through it, please, sir.

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1 A. The first section of is a copy
2 of the correspondence that I have received
3 from counsel. It is virtually no more than
4 cover letters on the documents that we have
5 just discovered -- or discussed as they
6 sent them to me.

7 Q. All right. Well, if you'll undo
8 that and just hand each thing to me.

9 MR. JOHNSON: I've got a set,
10 too.

11 MR. FROST: Oh, okay.

12 A. I'll run you off copies. We
13 hoped to do that without tearing my file to
14 pieces.

15 Q. And what I've just been handed
16 by your counsel, are these all the
17 correspondences that you've received from
18 plaintiff's counsel?

19 A. In letter form, I have gotten
20 three e-mails, if I recall correctly.

21 Q. But these would be all the
22 letters?

23 A. That is correct.

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1 Q. All right. Let me mark those as
2 Exhibit 25, collectively.

3 (WHEREUPON, a document was
4 marked as Defendant's Exhibit Number 25 and
5 is attached to the original transcript.)

6 Q. And then what do you have next,
7 please, sir?

8 A. In one of the depositions -- well, two
9 of the depositions came with an e-mail
10 cover on it and it's attached to the copy
11 -- as I printed them out on my computer it
12 was attached to it. So there's a copy with
13 that. Here's a copy of my motel
14 reservation for last night. If you'd like
15 a copy of that we could probably get you
16 one.

17 Q. No, sir.

18 MR. JOHNSON: Are you sure?

19 A. All right. There's also an
20 e-mail that was included with the Notice,
21 if you'd like to see it. I also obtained
22 copies of two ANSI standards, the two ANSI
23 standards are virtually identical. The

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1 ANSI stands for the American National
2 Standards Institute, Z89.1 of 1969, which
3 is the one that OSHA addressed in the 29
4 CFR 1926.100(a).

5 So that is the standard that
6 OSHA would enforce and I have provided you
7 with a copy of. I knew there was a later
8 edition of it in 1986, and I have also
9 included that in my file folder and
10 providing you with a copy of said document.

11 Q. All right. Let me mark the
12 first ANSI standard you discussed, the 1969
13 version, as Exhibit 26.

14 (WHEREUPON, a document was
15 marked as Defendant's Exhibit Number 26 and
16 is attached to the original transcript.)

17 Q. And I'll mark the 1986 version
18 as Exhibit 27.

19 (WHEREUPON, a document was
20 marked as Defendant's Exhibit Number 27 and
21 is attached to the original transcript.)

22 Q. Now, as I understand it, you are
23 disagreeing with OSHA that this standard

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1 should be cited because you don't think it
2 should -- that wearing head protection
3 would have done any good; is that right?

4 A. That was not really the reason I
5 don't agree with OSHA. It's the fact that
6 Mr. Cotton had no way of knowing, he had
7 not been noticed, put on notice that there
8 was any overhead work going on outside of
9 the building. As long as he was inside of
10 that building he did not have a need for
11 head protection. But this document will
12 verify that the drop test and what the
13 capacity of a hard hat would be at the
14 forty-pound limit.

15 Q. What do you have next, please,
16 sir?

17 A. In the 1988 edition of that
18 document -- in the 1988 edition of the same
19 ANSI Z-89.1, in the Forward it plainly
20 states in the second paragraph "It is
21 intended that this standard be applied in
22 an industrial environment where the primary
23 hazard is from small falling objects

19 (Pages 70 to 73)

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1 striking the top of the head. Protective
2 caps and hats provide protection for the
3 top of the head against small falling
4 objects striking the top of the shell, and
5 against light bumps. They are effective
6 against small tools, small pieces of wood,
7 bolts and nuts, rivets, sparks from
8 overhead work, and similar hazards.
9 Protective caps and hats only reduce the
10 amount of force from an impact blow and do
11 not provide complete head protection from
12 severe impact loads."

13 Q. All right. Did you say you were
14 reading from the 1989 version?

15 A. 1986 version.

16 Q. All right. I wanted to make
17 sure we weren't talking about another one.

18 MR. JOHNSON: '88, sir.

19 MS. HAND: '88.

20 MR. FROST: Wait a minute. This
21 is --

22 MR. THOMASON: It says '88 but
23 it's 86.

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1 MR. FROST: Yeah, I heard
2 another year. Okay. So we're not talking
3 about a different one, we're talking about
4 1986?

5 MR. JOHNSON: That's a 6.

6 A. If I said eight, I'll admit to
7 my blurred view. My eyes aren't the best
8 in the world anyway. But I think it's a
9 1986 version of it.

10 Q. All right. Anything else in
11 your documents there that you need to show
12 us?

13 A. And it plainly states in the
14 third paragraph "40 foot-pounds in the
15 impact resistance test". So, in essence,
16 there's a limit or the amount of protection
17 a hard hat can, in fact, provide and the
18 intent of that standard. Of course, in my
19 case file I've got a copy of my expert
20 witness report.

21 Q. Is that this document, sir?

22 A. That is correct.

23 Q. Let me mark that as Defendant's

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1 Exhibit 28.

2 (WHEREUPON, a document was
3 marked as Defendant's Exhibit Number 28 and
4 is attached to the original transcript.)

5 MR. FROST: Do y'all have a
6 clean copy? Mine is highlighted.

7 MR. JOHNSON: We've got a bunch
8 of clean ones here. Do y'all want some
9 clean ones?

10 MS. HAND: Sure.

11 Q. (By Mr. Frost:) And what else
12 do you have in there, please, sir?

13 A. In my file, I've also got a copy
14 of the tag and I have actually taken the
15 liberty to enlarge the back side of that
16 tag for my easier reading that was attached
17 to a piece of poly rope that appears to be
18 the identical rope that was used on that
19 job site by the same manufacturer, the same
20 skew number, the same everything.

21 Q. All right. And who provided
22 that rope to you?

23 A. I purchased pit myself.

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1 Q. When did you purchase it?

2 A. On April the 3rd of 2007.

3 Q. And you're saying that the
4 documents I've been handed by your counsel
5 are copies of the tag that is on the rope
6 that you purchased?

7 A. That's correct.

8 Q. Let me mark that as Exhibit 29.

9 (WHEREUPON, a document was
10 marked as Defendant's Exhibit Number 29 and
11 is attached to the original transcript.)

12 Q. And what else do you have,
13 please, sir?

14 A. Which I think we've already
15 marked, but the excerpts from the OSHA
16 Public Law 91-596. There's only two pages
17 of it.

18 MR. JOHNSON: I believe that was
19 22.

20 Q. (By Mr. Frost:) That would be
21 included in that? Okay.

22 A. That's correct. I also have a
23 copy of a directive put out by OSHA. By

20 (Pages 74 to 77)

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1 the way, this is on the web page. This is
2 where I got my copy, it's on the web site.
3 The www.osha.gov, and this is entitled the
4 Multi Employer Citation Policy, CPL2-0.124,
5 dated 12-10 of 1999. It was in effect on
6 the day of this mishap, and it is a later
7 version of the preceding directive that I
8 had used in years when I was employed with
9 OSHA and it talks about the different types
10 of employers that would be on a multi
11 employer work site.

12 Q. And I'm looking at the same
13 thing you're looking at. Those are
14 included in Exhibit 22 as well; is that
15 right?

16 A. That's correct.

17 Q. All right. What else do you
18 have, please, sir?

19 A. A copy of the OSHA standards
20 from 29 CFR 1926.

21 Q. And those are also included in
22 Exhibit 22; is that right?

23 A. That is correct.

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1 Q. And what else do you have,
2 please, sir?

3 A. A copy of the Alabama code
4 25-1-1, titled "Duties of employers, etc.,
5 with respect to provision of safe
6 employment."

7 Q. That's also included at the end
8 of Exhibit 22; is that right?

9 A. That is correct.

10 Q. All right.

11 A. So that's an Alabama law. I
12 said something earlier about a Georgia law,
13 and if I look at the Georgia law it would
14 be under an OCGA, Georgia Code, 34-2-10,
15 and it will be the exact same language,
16 including all punctuation. But it will
17 have a year of date of two years earlier
18 than this.

19 Q. All right. What else do you
20 have, please, sir?

21 A. And a copy of the Georgia code
22 was not included as it's not included in my
23 file. But if we do go back to Georgia law,

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1 that's what it would be.

2 A copy of what I refer to as
3 index sheets. As I read depositions, I
4 will make notes as to what's on that page.
5 I have no idea what's important and what is
6 not. But as I read those depositions, I
7 try to make a note of what would be
8 expected to find on that page. And I did
9 that for each of the depositions with the
10 exception of two, the two that was handed
11 to me yesterday afternoon. And I have not
12 had time to make notes.

13 Q. Which two were those?

14 A. That would be Mr. Camp and --

15 MR. JOHNSON: Ross. Mr. Ross is
16 the ones I gave you yesterday.

17 A. Mr. Ross, is it Daniel Ross?

18 MR. JOHNSON: It's Nathan Ross.

19 A. Nathan D. Ross.

20 Q. All right. Let me mark
21 collectively as Exhibit 30 your -- what did
22 you call these, please, sir?

23 A. Index sheets.

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1 Q. Indexes of the depositions?

2 A. Correct.

3 (WHEREUPON, a document was
4 marked as Defendant's Exhibit Number 30 and
5 is attached to the original transcript.)

6 A. And I put no importance of one
7 item over the other because I don't know
8 what's in there as I'm writing them down.

9 Q. Sure. And what else do you have
10 have, please, sir?

11 A. A copy of my time activity diary
12 from this case up until yesterday, which I
13 think I have also included a copy of that
14 as handout material that we will get in a
15 minute. It keeps a log of the hours that I
16 have put on this case and what dates I did
17 it; a copy of a Fed Ex bill where I had
18 sent a copy of my report in; a copy of the
19 sales slip, a receipt from the Home Depot
20 in Florence, South Carolina where I
21 purchased that rope; and a copy of the
22 purchase of the two ANSI standards that we
23 have previously discussed from IHS or a

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1 supply house for such documents.
2 Q. All right. Let me mark those
3 documents. I'm going to mark your case
4 file activity diary as Defendant's Exhibit
5 31.
6 (WHEREUPON, a document was
7 marked as Defendant's Exhibit Number 31 and
8 is attached to the original transcript.)
9 Q. And then I'm going to mark your
10 invoice for the purchase of the rope as
11 Defendant's Exhibit 32.
12 (WHEREUPON, a document was
13 marked as Defendant's Exhibit Number 32 and
14 is attached to the original transcript.)
15 MR. JOHNSON: You're including
16 in that 31 these three pages, this, the
17 invoice for the ANSI stuff.
18 MR. FROST: No, I didn't.
19 MR. JOHNSON: You've got them
20 separate. I'm sorry. Okay. Just this
21 right now?
22 MR. FROST: That's 31.
23 MR. JOHNSON: Okay.

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1 MR. FROST: The Home Depot
2 receipt is 32. Do you see any reason to
3 mark these?
4 MR. GANN: Just go ahead and
5 mark them.
6 Q. (By Mr. Frost:) I'll mark your
7 invoice and your Fed Ex statement
8 collectively as 33.
9 (WHEREUPON, a document was
10 marked as Defendant's Exhibit Number 33 and
11 is attached to the original transcript.)
12 Q. Anything else you have with you
13 today, sir?
14 MR. JOHNSON: We've already got
15 a 33.
16 MR. FROST: Two pieces of paper,
17 an invoice purchase and the ANSI standards
18 and his Fed Ex statement.
19 MR. JOHNSON: Did you mark this?
20 MR. FROST: That's 32.
21 MR. JOHNSON: Oh, I'm sorry.
22 Gotcha.
23 A. As far as attached to my working

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1 case file to date, that is all that has
2 been attached.
3 Q. Can I just look at that file
4 itself just for a moment?
5 A. It hasn't been attached yet.
6 (Off-the-record discussion.)
7 MR. JOHNSON: Mitch, there are
8 some additional things, I think, that are
9 not attached. I think it's like physically
10 attached to his file. You've got -- you're
11 looking at his depo indexes, but there are
12 underneath what you're looking at.
13 MR. FROST: Yeah, I was just
14 going to ask him one thing about this real
15 quick.
16 MR. JOHNSON: Sure.
17 Q. (By Mr. Frost:) I'm looking at
18 Exhibit 30, your deposition indexes.
19 A. Yes, sir.
20 Q. And it appears to me there are
21 some pages at the end that don't appear to
22 be deposition indexes, that appear to be
23 some other documents you may have prepared.

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1 What would those be?
2 A. This is it the ALT Second
3 Response for Request for Production. As I
4 looked through that packet, I made notes,
5 an index, so to speak, of what was in that
6 packet.
7 Q. So these additional pages at the
8 end of that exhibit are indexes, just not
9 deposition indexes?
10 A. That's correct.
11 Q. Okay.
12 A. Same thing as ALT's Response to
13 Request for Production. Another one is
14 ALT's Answers to Interrogatories and
15 WestTower Answers to Interrogatory Index
16 sheets of the packet that were provided.
17 Q. Okay. And those are also
18 included on Exhibit 30?
19 A. That's correct.
20 MR. FROST: And what were you
21 pointing to?
22 MR. JOHNSON: Yeah, I was going
23 to say I think that there were some loose

22 (Pages 82 to 85)

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1 sheets.
2 THE WITNESS: That's loose
3 sheets that is not attached.
4 MR. FROST: We have this
5 already.
6 MR. JOHNSON: In your right
7 hand, though, I think that's an excerpt
8 from one of the textbooks the two of you
9 talked about a moment ago.
10 MR. FROST: Right. And we have
11 not marked this yet, I don't think.
12 MR. JOHNSON: Right.
13 MR. FROST: Let me mark --
14 MR. THOMASON: Mitch, we have a
15 copy.
16 Q. (By Mr. Frost:) I'm marking
17 this excerpt. It appears -- what book is
18 this from, this excerpt, Exhibit 34?
19 (WHEREUPON, a document was
20 marked as Defendant's Exhibit Number 34 and
21 is attached to the original transcript.)
22 MR. JOHNSON: What page is that,
23 50?

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1 THE WITNESS: 50.
2 MR. JOHNSON: Yeah, acceleration
3 distance and time. Yeah, it's the same
4 book. Does the next picture have the
5 leaning tower of Pisa and an airplane?
6 A. This came from the Modern
7 Technical Physics by Beiser of the 1966
8 publication date, or copyright date.
9 Q. And you already gave us the
10 information about that book earlier, right,
11 sir?
12 A. Correct.
13 MR. FROST: All right. We've
14 been going for an hour and a half. Can we
15 have a little break for a few minutes?
16 MR. JOHNSON: Yeah, certainly.
17 10:37 a.m.
18 (Short recess)
19 10:53 a.m.
20 Q. (By Mr. Frost:) All right. Mr.
21 Turner, have you showed us everything that
22 you have either reviewed or looked at or
23 contemplated with regard to offering your

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1 opinions today?
2 A. Unless I'm overlooking
3 something. Oh, I've got some calculations
4 that I've crunched some numbers on.
5 Q. All right. And these are with
6 regard to your speed of the antenna
7 opinions?
8 A. That's correct.
9 Q. Okay. Let me mark this as
10 Defendant's Exhibit 35.
11 (WHEREUPON, a document was
12 marked as Defendant's Exhibit Number 35 and
13 is attached to the original transcript.)
14 Q. Have you also referred us to or
15 shown me anything you've been provided by
16 anybody with regard to this case?
17 A. As far as I know, you've seen it
18 all. I may be overlooking something in all
19 this mass of documents, but I think you've
20 seen it all.
21 Q. All right. Other than your
22 calculations and your review of the physics
23 books with regard to the hard hat

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1 protective equipment issue, have you done
2 any other investigation or research or
3 performed any other calculations in any way
4 in this case?
5 A. Not at this point, I haven't.
6 MR. JOHNSON: Well, what
7 about -- did you go to the site?
8 THE WITNESS: Oh, yeah, I went
9 by the site.
10 MR. JOHNSON: I think that's
11 what he's asking you, too.
12 A. I went by that site yesterday
13 and observed from outside the fence, I did
14 not go inside the fence, even though there
15 was a truck backed -- parked or backed up
16 in that fence way or gateway and there were
17 some people working inside that building.
18 But I did not actually set foot inside that
19 fenced compound.
20 Q. So was that the first time you
21 had been to the site?
22 A. That is correct.
23 Q. So the first time that you went

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1 to the site was August 22nd --
2 A. 22nd, that's correct.
3 Q. -- 2007?
4 A. That's correct.
5 Q. Okay. Did your visit to the
6 site change your opinions in any way?
7 A. It only enhanced my opinions.
8 MR. JOHNSON: Are these all the
9 exhibits, depo exhibits here?
10 MR. FROST: I think so.
11 MR. GANN: Let me ask you. Page
12 1 of Exhibit 35 appears to be calculations.
13 Page 2 has a note at the top talking about
14 no notice of overhead work and things of
15 that nature. Those do not appear to be
16 calculations.
17 THE WITNESS: Those are not
18 calculations other than the fact how do you
19 calculate the fall zone. So you would take
20 the radius of the fall zone would be half
21 the height, so if you've got a 400-foot
22 tower it would extend 200 feet. In those
23 notes, I don't recall how I came up with

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1 those notes. It just happened to be on the
2 piece of paper that I was jotting down some
3 calculations on.
4 Q. Do you have any other pieces of
5 paper where you've jotted down any notes
6 other than what is Exhibit 35?
7 A. No, sir.
8 Q. Did you have any drafts of your
9 opinions before Exhibit 28 was produced?
10 A. I hand write it. Of course, a
11 lot of it is nothing more than boilerplate
12 that I have used over the numbers of years.
13 Sometimes I will take an existing one,
14 photocopy it and scratch through the style
15 of that one and mark through it and then my
16 wife types it up for me.
17 Q. Do you know where your
18 handwritten notes would be?
19 A. After she gets through typing it
20 up, I will actually burn them, literally
21 put a match to it and burn them in a 55-
22 gallon drum.
23 Q. Why is that?

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1 A. Just so they won't appear
2 nowhere else.
3 Q. Did your wife type up Exhibit
4 28?
5 A. That's correct. And if you saw
6 my notes, you'd understand why I have her
7 type it up and then I destroy them. The
8 same thing with the index sheets.
9 Sometimes I can't even read them myself.
10 How she does, I don't know.
11 Q. Did you consult with anyone else
12 in arriving at any of the opinions you
13 intend to offer?
14 A. No, sir.
15 Q. When were you first contacted
16 about being an expert in this case?
17 A. At some time prior to March the
18 17th of 2007, by telephone.
19 Q. All right. I'm looking at
20 Defendant's Exhibit 31, which is entitled
21 your case file activity diary. And that,
22 as I understand from your earlier comments,
23 that's where you note all the time that you

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1 spend on the file; is that right?
2 A. That's correct.
3 Q. But you don't have any notations
4 before March 17, 2007; is that right?
5 A. That is correct.
6 Q. But since you were receiving and
7 looking at materials on that day, you
8 obviously had been contacted prior to that
9 day; is that right?
10 A. That's correct.
11 Q. But you just don't know when
12 that date was?
13 A. That's correct.
14 Q. Do you know who contacted you?
15 A. Mr. Eddie Johnson.
16 Q. Do you know what depositions and
17 materials you reviewed on March 17, 2007?
18 A. The only way I would know that
19 would be going back and looking at the
20 cover letters and what materials he had
21 sent me on that day, prior to that day.
22 MR. JOHNSON: 25.
23 Q. (By Mr. Frost:) All right.

24 (Pages 90 to 93)

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1 Within Exhibit 25, there appears to be a
2 letter dated March 13, 2007.
3 A. Yes, sir.
4 Q. Is that the correspondence that
5 you're talking about?
6 A. In fact, there were two letters
7 on that date.
8 Q. Yeah. Okay. They're separated
9 by several other pages. Is it this letter
10 that you're talking about, the March 13,
11 2007 letter?
12 A. That's correct. And all it does
13 it says "Enclosed for your review are
14 copies of the following items." And those
15 are the items that I have been reviewing.
16 Q. Do you have a second page to
17 that letter?
18 A. No, sir.
19 Q. Okay. There's not a second page
20 on this one.
21 MR. JOHNSON: Oh, on the copy.
22 We'll make one at a break.
23 Q. It's not a problem. We can fix

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1 that later.
2 A. I didn't do that intentionally.
3 Q. Okay. So the March 17, 2007
4 entry relates to the fact that you read all
5 of the information and documents provided
6 to you on that March 13 letter; is that
7 right?
8 A. That is correct.
9 Q. After reading all that
10 information, did you formulate the opinions
11 that you're offering today?
12 A. At that time, I had not
13 formulated any opinions as such. I was
14 just reviewing material to try to prepare
15 myself to make the formulation of opinions.
16 Q. When was it that you did
17 determine the opinions -- or your initial
18 opinions that you're offering today?
19 A. That would have been after I
20 read the depositions on June the 3rd of
21 2007 and all in between, as I wrote the
22 report on June the 4th of 2007.
23 Q. So you did not come to your

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1 conclusions and opinions until after you
2 received additional depositions on June 3,
3 2007?
4 MR. JOHNSON: Object to the
5 form.
6 A. That is correct.
7 Q. And the depositions, what did
8 you receive then? I see a June 1, 2007
9 letter in Exhibit 25 and it says you were
10 provided Jeff Silva, Adam Waterman and Josh
11 Cook. Is that your understanding?
12 A. That is correct.
13 Q. Okay. So after reviewing those
14 depositions, you then were able to make
15 your opinions; is that right?
16 A. I think I can agree with that
17 statement, yes.
18 Q. All right. Because as we know,
19 as you pointed out to me on Exhibit 28,
20 which is your initial opinions, you
21 assigned those on June 4, 2007?
22 A. That is correct. But I did not
23 receive the exhibits until after I had

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1 written the report.
2 Q. All right. Now, Exhibit 32
3 indicates that you purchased the exemplar
4 rope that you have with you today on April
5 3, 2007; is that right?
6 A. That's correct.
7 Q. How did you know on that date
8 what kind of rope to purchase?
9 A. By looking at the photographs.
10 Q. All right. So you had been
11 provided photographs by that time?
12 A. Yes, sir.
13 Q. When were you able to confirm
14 that the exemplar rope you purchased was
15 identical, as you said, to the rope used in
16 the accident?
17 A. To this date, I have not.
18 Q. You've not been able to do that
19 yet?
20 A. I've never seen the actual rope,
21 nor the antenna.
22 Q. Well, having not ever seen the
23 actual rope, how are you able to come to

25 (Pages 94 to 97)

Page 98

1 the conclusion that the rope used at the
2 time of the accident was not appropriate?

3 A. It appears to me that it is the
4 same type rope, it's the same manufacturer,
5 same skew number, same everything. And I
6 would be rather amused and amazed if it's
7 not the same rope.

8 Q. Okay. If you could, please,
9 sir, with regard to ALT, who is the company
10 that I represent, could you tell me what
11 opinions you are offering against ALT in
12 this case?

13 A. That they were an employer who
14 had created a hazardous condition by
15 climbing that tower, and using a rope that
16 was not approved for lifting purposes to
17 hoist the antenna or lower antennas off of
18 that job site, creating the hazardous
19 condition.

20 Q. Any other opinions directed to
21 ALT?

22 A. That they had failed to warn the
23 employees of another contractor, which was

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1 BetaCom, that was working on that same
2 compound within the fall radius of that
3 tower.

4 Q. Any other opinions directed to
5 ALT?

6 A. I would go so far as to say that
7 they, in this rope that they had purchased,
8 knowing that the warnings was on that tag
9 saying not to be used for lifting purposes,
10 they violated a principal any prudent,
11 diligent employer would have not used that
12 rope for lifting purposes. So they did not
13 respond or act in the same capacity as a
14 prudent, diligent employer.

15 Q. Any other opinions you intend to
16 offer against ALT in this case?

17 A. Not that I can think of at the
18 moment. There may be further discovery yet
19 to be provided to do otherwise, but at the
20 moment I don't recall anything else.

21 Q. Why don't we try to take each
22 one of those one at a time.

23 MR. NORRIS: What are you

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1 looking for, Mitch? Can I help you?

2 MR. FROST: Here it is.

3 Q. (By Mr. Frost:) As I
4 understand, your first opinion is that ALT
5 and/or its employees created a hazardous
6 condition at the job site; is that right?

7 A. That is correct.

8 Q. What hazardous condition did
9 they create?

10 A. The fact that they were working
11 above the heads of others on that job site
12 and especially when they were using
13 materials such as the subject rope that
14 have been -- put the employer on notice
15 with the warning label on the tag at the
16 time of purchase that it was not to be used
17 for that purpose.

18 Q. All right. So the basis of that
19 opinion is two-fold then, that they were
20 working overhead of others and they were
21 using materials that you say they had been
22 warned they should not use; is that right?

23 A. Absolutely.

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1 Q. What have you reviewed or
2 considered that supports that first
3 opinion?

4 A. That they were working aloft.
5 Is that what you're asking?

6 Q. I assume you've reviewed
7 depositions; is that right?

8 A. That's correct.

9 Q. Okay. In the depositions you've
10 reviewed, have you reviewed any depositions
11 that told you that the BetaCom employees
12 working inside the building knew that the
13 ALT employees were working overhead?

14 A. No, sir.

15 Q. Did you review Jason Cook's
16 deposition?

17 A. I did.

18 Q. Did you note in that deposition
19 that Mr. Cook, who was a BetaCom employee,
20 knew they were working overhead?

21 MR. DEAN: Object to the form.

22 A. I don't recall that.

23 Q. Let me show you some excerpts

26 (Pages 98 to 101)

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1 from Mr. Cook's deposition. And I'll show
2 you particularly page 14 and ask you if you
3 remember seeing where he was asked "At the
4 time you arrived on the day of the
5 accident, did you see any signs or warnings
6 that said overhead work was being performed
7 on the site?" And his answer, "When I
8 arrived, I seen people climbing the tower
9 so common sense I knew they were working
10 overhead." Did you read that testimony,
11 please, sir?

12 A. I did.

13 Q. Does that change your earlier
14 testimony that, in fact, there was a
15 BetaCom employee there who knew that the
16 ALT employees were working overhead prior
17 to the accident?

18 MR. JOHNSON: Object to the
19 form.

20 MR. DEAN: Object to the form.

21 A. I will agree with his statement
22 in his deposition when he said that, that
23 he would have known.

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1 Q. All right. Are you aware of
2 whether any other BetaCom employees, who
3 were at the site that day, knew that the
4 ALT employees were working overhead before
5 the accident?

6 MR. JOHNSON: Object to the
7 form.

8 A. No, sir.

9 Q. Can you tell me, please, sir,
10 when you received, for your review,
11 Defendant's Exhibit 20, which is Defendant
12 Cingular Wireless' Response to Plaintiff's
13 Request for Production of Documents?

14 A. When I reviewed it, is that the
15 question?

16 Q. When you received it for review,
17 yes, sir.

18 A. And this is what, again?

19 MR. JOHNSON: Cingular.

20 Q. (By Mr. Frost:) It's
21 Defendant's Exhibit 20, and it's entitled
22 Defendant Cingular Wireless' Responses to
23 Plaintiff's Request for Production of

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1 Documents.

2 MR. JOHNSON: Do you want to
3 look at the exhibit, Mr. Turner, that he's
4 referring to?

5 THE WITNESS: Please.

6 Q. (By Mr. Frost:) I believe it
7 may be referenced in the May 1, 2007 letter
8 you received in regard to Defendant's
9 Exhibit 25.

10 A. That is correct, and it would be
11 a day or so after the May 1st.

12 Q. But in any event, before you
13 came to your conclusions and opinions,
14 right, sir?

15 A. That is correct.

16 Q. All right. If you would, look
17 with me at Defendant's Exhibit 20 and I'll
18 ask if you remember reviewing the BetaCom
19 investigation report?

20 A. I remember reading it, yes, sir.

21 Q. All right. Would you look with
22 me on page two of that document, on number
23 9C. Could you read that paragraph, number

Page 105

1 9C?

2 A. I have read it, yes, sir.

3 Q. All right. Can you read it for
4 the record, please, sir?

5 A. "At eleven thirty a.m. BetaCom
6 Employees, Jason Cook and Eric Davis,
7 arrived at the site. They had come to meet
8 up with Wheeler and Cotton to go to lunch.
9 Both noticed the tower crew on the tower
10 but made no reference of it to Wheeler and
11 Cotton when they went inside."

12 Q. All right. Are you aware, then,
13 sir, that both Mr. Jason Cook and Mr. Eric
14 Davis, who were BetaCom employees at the
15 site the day of the accident, knew that the
16 ALT employees were working overhead that
17 day?

18 MR. JOHNSON: Object to the
19 form.

20 MR. DEAN: Object to the form.

21 A. I do not know that other than
22 what you just showed me in Mr. Cook's
23 deposition.

Page 106

1 Q. Well, do you have any reason to
2 dispute the investigation report prepared
3 by BetaCom that states they did see the
4 tower crew on the tower?

5 A. No, sir.

6 Q. All right. Do you have any
7 reason to dispute Jason Cook's testimony in
8 which he says that he knew they were
9 working overhead on the tower that day
10 prior to the accident?

11 MR. DEAN: Object to the form.

12 MR. JOHNSON: Object to the
13 form.

14 A. No, sir.

15 Q. Does the fact that these two
16 documents have been brought to your
17 attention, both Mr. Cook's testimony and
18 the BetaCom investigation report, change
19 your opinion in any way that the BetaCom
20 employees did not know that ALT was working
21 overhead on the day prior to the accident?

22 MR. JOHNSON: Object to the
23 form.

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1 A. From this document, those two
2 employees may have known. But I have no
3 evidence that the rest of them inside the
4 building knew anything about it.

5 Q. Yes, sir, but does it change
6 your opinion that the BetaCom employees did
7 not know that ALT was working overhead on
8 the day prior to the accident?

9 MR. JOHNSON: Object to the
10 form.

11 A. No, sir. It may affect those
12 two employees, but not the other employees.

13 Q. So you would admit to me now
14 that you understood that Jason Cook and the
15 other employee, Mr. Eric Davis, did know,
16 as far as you can tell from the documents
17 provided to you, did know that ALT was
18 working overhead prior to the accident?

19 MR. DEAN: Object to the form.

20 MR. JOHNSON: Object to the
21 form.

22 A. This report that you have gotten
23 in front of me from BetaCom and their

Page 108

1 investigation states that, and Mr. Cook's
2 deposition states that, but I have seen
3 nothing nowhere that Mr. Davis knew.

4 Q. Other than the BetaCom
5 investigation report?

6 A. That's correct.

7 Q. So would it be fair to say that
8 prior to the accident, on that day, two of
9 the four BetaCom employees who were on the
10 work site did know that, as far as the
11 information provided to you, did know that
12 ALT employees were working overhead?

13 MR. DEAN: Object to the form.

14 MR. JOHNSON: Object to the
15 form, asked and answered.

16 A. I thought I'd answered that.

17 Q. What was your answer? I'm
18 sorry, sir.

19 MR. JOHNSON: Object to the
20 form.

21 MR. DEAN: Object to the form.

22 MR. JOHNSON: Asked and
23 answered.

Page 109

1 A. That Mr. Cook, in his
2 deposition, admits that he saw it
3 apparently. But I've seen nothing in Mr.
4 Davis' other than the BetaCom investigation
5 report.

6 Q. All right. As an employee of
7 BetaCom, when Mr. Cook, Jason Cook, is
8 aware that there are ALT employees working
9 overhead, is he under any obligation or
10 duty to inform his co-employees of that
11 fact, in your opinion?

12 A. I would think he would, yes.

13 Q. Do you know of any --

14 A. But here again, I don't know
15 whether he was in a supervisory capacity.

16 Q. Okay. Are you aware of any
17 evidence or testimony that indicates that
18 he did inform the other BetaCom employees
19 of the fact that the ALT employees were
20 working overhead?

21 A. I've seen no evidence to that
22 effect that I can recall.

23 Q. All right. Let me refer you to

28 (Pages 106 to 109)

Page 110

1 Mr. Cook's testimony again, please, sir, on
2 page 20, line 15. If you'll look at that
3 and read that into the record, please, sir,
4 page 20, line 15.

5 A. "Do you recall hearing a comment
6 or telling anybody out there was overhead
7 work occurring?"

8 And his answer is "I actually
9 mentioned it."

10 Q. All right. Thank you, sir. Did
11 you see that testimony when you read it the
12 first time?

13 A. I've read that deposition, but I
14 don't recall that statement.

15 Q. Now, I think you made an index
16 when you read the depositions -- let me ask
17 you this: Exhibit 30 is the index that you
18 made when you reviewed the depositions; is
19 that correct?

20 A. That is correct.

21 Q. Okay. Now, when you read the
22 depositions, what is the purpose of the
23 index? Are you writing down things that

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1 within deposition Exhibit 30 your index of
2 Jason Cook. And I believe you note -- you
3 write down about page 17, you say "Was
4 aware of work overhead and natural dangers
5 of falling objects." Do you see that, sir?

6 MR. JOHNSON: Do you mean Jason
7 Cook or Joshua Cook?

8 MR. FROST: Jason Cook.

9 A. I see the note, yes.

10 Q. Okay. Was that something that
11 would be important to you in considering
12 your opinions as to whether the BetaCom
13 employees knew there was overhead work
14 being done at the time prior to the
15 accident?

16 MR. JOHNSON: Object to the
17 form.

18 MR. DEAN: Object to the form.

19 A. I think that would be a
20 consideration I would have in the process
21 of forming my opinion, yes.

22 Q. Would that lead you to believe
23 that the BetaCom employees, or at least

Page 111

1 you think are important that you might rely
2 on in making your opinions later?

3 A. I've answered that one time
4 earlier. I do not put importance on those
5 index sheets. I only state what's on that
6 page.

7 Q. Well, why would you select a
8 particular page as opposed to something
9 else?

10 MR. JOHNSON: Object to the
11 form, not specific.

12 A. In the process of reading a
13 deposition, not knowing what I'm getting
14 involved with, I just try to make notes
15 from one page to the next as I go along.

16 Q. But are you noting on these
17 indexes things that you think might be
18 important to you?

19 MR. JOHNSON: Object to the
20 form.

21 A. Not necessarily. I don't know
22 what's important.

23 Q. All right. Let me show you

Page 113

1 Jason Cook, who was on the site, knew that
2 the ALT employees were working overhead
3 prior to the accident?

4 MR. DEAN: Object to the form.

5 MR. JOHNSON: Same.

6 A. That would be Mr. Cook, only.

7 Q. Now, do you have an opinion,
8 sir, whether it was appropriate or not for
9 ALT employees to be working overhead if
10 they understood the BetaCom employees would
11 be working inside the shelter at the site?

12 A. I think that would have been a
13 time to call a meeting and say, hey, one of
14 us has got to go, either we've got to come
15 off the tower, you've got to leave the
16 site. There's got to be a compromise here
17 somewhere.

18 Q. So you're saying -- and you need
19 to answer my question if you can. So are
20 you telling me that you think it would not
21 be appropriate for ALT to be working
22 overhead even though the BetaCom employees
23 would be working in the shelter?

Page 114

1 A. As long as they didn't come out
2 of the shelter it would be appropriate.

3 Q. Oh, okay. That's what I was
4 asking then. All right. So it's your
5 opinion that if they were in the enclosed
6 shelter and were not coming out within the
7 fall zone area, then it would be okay?

8 A. I wouldn't have no problem with
9 it.

10 Q. All right. Now, if that was, in
11 fact, what was happening at the job site,
12 that the ALT employees were working
13 overhead and they understood the BetaCom
14 employees were inside the shelter, all four
15 of them were inside the shelter, when it
16 came time that the BetaCom employees wanted
17 to exit the shelter, what, in your opinion,
18 needed to happen?

19 MR. JOHNSON: Object to the
20 form.

21 MR. DEAN: Object to the form.

22 A. That's a point in which there
23 would actually be a direct communication

Page 115

1 between all concerned.

2 Q. All right. And do you have an
3 opinion as to who would have to initiate
4 that conversation?

5 A. That should be something that
6 would be predetermined before they allowed
7 the work to continue from -- before they
8 climbed the tower or either before they
9 came out of the building.

10 Q. Okay. So it is your opinion
11 that under that scenario that the ALT
12 employees and the BetaCom employees should
13 have had a predetermined method of
14 communication if the BetaCom employees were
15 going to exit the building; is that right?

16 A. That is correct.

17 Q. Okay. All right. Do you place
18 any particular responsibility on either
19 one, either ALT or BetaCom, to make sure
20 they have that predetermined communication?

21 A. I would think in this case
22 BetaCom (sic) would take the precedence as
23 far as having the duty because they're the

Page 116

1 ones who went aloft. They created that
2 hazard. Before you start creating that
3 hazard you need to put others on notice.

4 Q. I believe you meant to say ALT
5 went aloft; is that right?

6 A. That's correct.

7 MR. JOHNSON: You said BetaCom.

8 A. I'm sorry.

9 Q. We'll keep it straight. So
10 you're saying that ALT --

11 MR. JOHNSON: So will we.

12 Q. (By Mr. Frost:) You're saying
13 that ALT, because it was creating the
14 hazard, had the responsibility to do a
15 predetermined form of communication; is
16 that right?

17 A. Absolutely.

18 Q. Okay. You don't find fault in
19 any way with BetaCom for not doing that?

20 A. Not really.

21 Q. What do you mean "not really"?

22 A. Because they didn't know they
23 were going up.

Page 117

1 Q. Well, we've already established,
2 sir, that at least two of the BetaCom
3 employees did know that, haven't we?

4 MR. DEAN: Object to the form.

5 MR. JOHNSON: Object to the
6 form.

7 A. You may have, but I haven't.

8 Q. Well, we've established, sir,
9 haven't we, that at least Jason Cook, one
10 of the BetaCom employees, knew that prior
11 to the accident, haven't we, sir?

12 MR. DEAN: Object to the form.

13 MR. JOHNSON: Same objection.

14 A. Yes, sir. That reduces it by
15 fifty percent.

16 Q. Well, we have, haven't we, sir?

17 MR. DEAN: Object to the form.

18 MR. JOHNSON: Object to the
19 form.

20 A. I'll agree to that.

21 Q. Okay. And what form of
22 communication are you saying would have
23 been preferable between ALT and BetaCom if

Page 118

1 and when the BetaCom employees were going
2 to exit the building?

3 A. I would have no preference as
4 long as it was effective.

5 Q. Okay. And when you say you
6 would have no preference, that could have
7 been speaking to somebody, using a radio,
8 communicating with whoops, or any kind of
9 communication; is that right?

10 MR. DEAN: Object to the form.

11 A. Whatever is effective, that is
12 correct.

13 Q. Okay. And on that job site and
14 on that day, were there any forms of
15 communication that you thought could not be
16 effective for any reason?

17 A. Unless it was sign language
18 where you couldn't see.

19 Q. All right. Thank you. Now, is
20 your opinion against ALT related to the
21 OSHA multi employer work site regulations,
22 or do they play a part at all in your
23 opinions against ALT?

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1 A. It's a multi employer work site
2 citation, policy by OSHA, that each one has
3 a stand-alone duty as well as the Alabama
4 law, which said the employers shall have a
5 duty.

6 Q. All right. If you would, sir,
7 go to your multi employer work site OSHA
8 regulations and point out to me which ones
9 you say relate to what ALT was doing at the
10 job site.

11 MR. JOHNSON: What exhibit is
12 that, Mitch?

13 MR. FROST: It's 22.

14 A. It should be in here.

15 Q. Yes, sir, I was looking for one
16 other thing. I must have misplaced it.
17 Let me come back to that. I'm going to
18 have to find something else.

19 All right. Let's just go ahead
20 and get that. What is it about the multi
21 employer OSHA regulations that you say ALT
22 was somehow in violation of?

23 A. On each job site there are four

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1 employers on each job site on a multi
2 employer work site according to this
3 policy. You've got the creating employee,
4 that was definitely ALT. No one else on
5 that job site created this condition.

6 Q. And what else, anything?

7 A. They could also be considered
8 the correcting employer, which they had a
9 duty to correct that hazard and others
10 exposed by either coming down off the
11 tower, leaving that job site, or get the
12 others to remove themselves from the
13 hazard.

14 Q. But who has the obligation to be
15 the correcting employer?

16 A. In this case, I think ALT would.

17 Q. Would BetaCom not have any
18 responsibility in that regard?

19 A. Not unless they had been put on
20 notice, and I don't think they had been.

21 Q. Okay. Let's talk about that
22 then. If BetaCom, its employees, were on
23 notice that ALT's employees were working

Page 121

1 overhead and had created a hazard, were
2 they under an obligation to correct the
3 situation?

4 MR. DEAN: Object to the form.

5 MR. JOHNSON: Object to the
6 form.

7 Q. (By Mr. Frost:) Per the OSHA
8 regulations?

9 A. I don't think it would be really
10 a correcting. I think it would be an
11 exposing, but not a correcting employer.
12 The creating had the duty to correct it.

13 Q. You said they would be what kind
14 of employer, though?

15 A. An exposing employer.

16 Q. And what does that mean?

17 A. It means they had employees
18 exposed to the hazard.

19 Q. All right. And as an exposing
20 employer, what obligations or duties do you
21 have to protect your employees?

22 A. Each employer has a stand-alone
23 duty to protect his employees on any job

Page 122

1 site.

2 Q. All right. Well, what about the
3 BetaCom employees on this particular job
4 site, what was their obligation to protect
5 themselves?

6 A. To protect themselves from
7 overhead hazards, anybody working within
8 the fall radius of it they had the job of
9 -- they had the duty for their own
10 employees as well as other employees who
11 would infringe upon that fall safety zone,
12 or fall radius zone.

13 Q. And how would they have done
14 that in this case, please, sir?

15 A. Putting them on notice and have
16 an understanding, hey, we're going aloft,
17 we're going to have hazards from above,
18 therefore we need to get you off of this
19 job site.

20 Q. And that was the obligation of
21 the BetaCom employees?

22 A. Absolutely. They created the
23 hazard.

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1 was asking you. What is the obligation of
2 the exposing employer when there is a
3 potential for its employees to be in a
4 hazard?

5 A. Remove the employee from the
6 hazard or protective measures to deal with
7 the problem.

8 Q. All right. And what was done by
9 the BetaCom employees in that regard on
10 this particular job site?

11 A. They were working inside of a
12 structure and I don't -- I have seen
13 nothing to indicate to me that the
14 employees that were inside working on that
15 structure had been put on notice.

16 Q. Put on notice about what,
17 please, sir?

18 A. The overhead hazard.

19 Q. Do I need to show you Jason
20 Cook's deposition again, please, sir?

21 MR. JOHNSON: Object to the
22 form.

23 MR. DEAN: Object to the form.

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1 Q. All right. We've got to be
2 careful.

3 A. Oh, no, I'm sorry. ALT, ALT.

4 Q. All right.

5 A. They created the hazard.

6 MR. DEAN: Who is "they"? Who
7 is "they", who are you saying is "they"?

8 MR. JOHNSON: Who are you saying
9 is "they".

10 A. That ALT has the duty. They
11 created the hazard, they had the duty. ALT
12 had the duty to correct.

13 Q. All right. Were you telling me
14 earlier that BetaCom, whose employees were
15 within the shelter, was an exposing
16 employer, that it was allowing its
17 employees to be exposed to a potential
18 hazard, is that what you said earlier?

19 A. If they come out without the --
20 knowing that they were -- the hazard was
21 there, then they would be an exposing
22 employer.

23 Q. All right. And that's what I

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1 Q. (By Mr. Frost:) That is
2 evidence. He was under oath. That is
3 evidence, I believe, that at least one of
4 the BetaCom employees knew there was
5 overhead working, right, sir?

6 A. One knew, that's correct. But
7 the others didn't.

8 Q. All right. But what obligation
9 did Jason Cook have, knowing that there was
10 a potential hazard, what obligation did he
11 have as an exposing employer to remedy the
12 situation?

13 A. I don't know his capacity or
14 what control he had of that job site. I do
15 know he exposed himself to the overhead
16 hazard.

17 Q. Well, let's assume that he did
18 not have managerial capacity at the job
19 site. Is he under any obligation to inform
20 his fellow employees of a potential hazard?

21 A. Well, I think he's got a moral
22 obligation.

23 Q. A moral obligation?

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1 A. Yes, sir.
2 Q. Is there any OSHA regulation,
3 ANSI standard, or otherwise, that would
4 require Mr. Cook, as a BetaCom employee, to
5 inform his fellow employees of the
6 potential hazard?

7 A. I know of none unless he's in a
8 management position.

9 Q. So you don't place a burden on
10 the individual employees to inform their
11 co-employees of potential hazards?

12 MR. JOHNSON: Object to the
13 form.

14 A. I think it could be a nice thing
15 to do, but I don't know of any regulation
16 that says he had to.

17 Q. Okay. Well, do you know if
18 BetaCom had anybody in management
19 authority, or whatever level you say they
20 need to be before they have to inform the
21 other employees, at the job site that day
22 before the accident?

23 A. No, sir.

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1 Q. Do you know what position Mr.
2 Cook -- I mean, yeah, Mr. Jason Cook held
3 on that job site?

4 A. No, sir.

5 Q. Do you what position Mr. Eric
6 Davis held on the job site?

7 A. No, sir.

8 Q. Do you know what position Mr.
9 Cotton held on the job site?

10 A. I understand he was a lead man
11 on that job site.

12 Q. Mr. Cotton was? All right. And
13 do you know what position Mr. Wheeler held
14 on the job site?

15 A. I'm sorry. Mr. Wheeler was the
16 lead man. Mr. Cotton was a helper.

17 Q. All right. Now, as a lead man
18 on the job site, what obligations did Mr.
19 Wheeler have with regard to safety?

20 A. I think he had a duty and
21 obligation.

22 Q. To do what, please, sir?

23 A. To protect his employees.

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1 Q. And on that particular job site,
2 what would that entail? If he knew that
3 the ALT employees were there, and I believe
4 his testimony is to the effect he knew they
5 were there and would be working that day,
6 what duty or obligation did Mr. Wheeler, as
7 the lead man or supervisor, have to provide
8 a safe workplace for the other BetaCom
9 employees?

10 A. I did not get that out of his
11 deposition. In his deposition, he stated
12 he did not know they were working overhead
13 until he heard "headache" at noon.

14 Q. Yes, sir, I understand he did
15 say that. What I'm asking you, though, is
16 you did read in his deposition that he did
17 know the ALT employees were at the job site
18 and would be working that day?

19 A. But not aloft. He believed they
20 were doing ground work.

21 Q. Okay. But you do know that he
22 testified he knew they were there?

23 A. That's correct.

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1 Q. Okay. And what obligations
2 would he have, if any, in your opinion, to
3 provide a safe work place for his
4 employees?

5 MR. DEAN: Object to the form.

6 MR. JOHNSON: Same.

7 A. I think he has the duty to
8 protect his employees on that job site if
9 they -- provided he knew that the condition
10 existed. You can only ask out of anyone
11 what a prudent, diligent employee would be
12 expected to do. And if he was working
13 inside the building and did not know, you
14 can't hold him accountable for that.

15 Q. Okay. Well, I assume you know
16 there has been testimony that Mr. Wheeler
17 was informed, Mr. Cook and Mr. Wheeler both
18 were informed by Mr. Josh Cook that they
19 would be working overhead that day. You're
20 aware of that, aren't you, sir?

21 MR. DEAN: Object to the form.

22 MR. JOHNSON: Same objection.

23 A. Mr. Josh Cook is the only

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1 deposition I have seen that says he told
2 them. But I have seen no other evidence to
3 uphold what he has said in his deposition.
4 Q. Well, is there any reason you're
5 discounting completely Mr. Josh Cook's
6 deposition testimony?
7 A. Other than the fact that it did
8 not happen.
9 Q. How do you know that didn't
10 happen, sir?
11 A. We've got a fatality.
12 Q. So the fact that Mr. Cotton is
13 deceased leads you to totally discount Mr.
14 Cook's testimony where he says he informed
15 Mr. Cotton and Mr. Wheeler that they would
16 be working overhead?
17 A. So it wasn't effective.
18 Q. He wasn't effective?
19 A. If he informed anybody, it sure
20 wasn't effective.
21 Q. So you don't -- you don't
22 disagree that he may have informed them, do
23 you?

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1 MR. DEAN: Object to the form.
2 MR. JOHNSON: Same objection.
3 A. His testimony in his deposition
4 is the only evidence I've got that he did.
5 Q. Okay. Well, let me back up for
6 a minute. You've got Jason Cook, who was a
7 BetaCom employee, he says he knew they were
8 working overhead. You understand that; is
9 that right?
10 A. That's what he says in his
11 deposition, correct.
12 Q. And you understand from Mr.
13 Cook's testimony that he says he mentioned
14 it to the other BetaCom employees when he
15 went into the building. You're aware of
16 that, aren't you?
17 MR. JOHNSON: Object to the
18 form.
19 A. The only thing I remember
20 reading in there is he did, in fact,
21 mention it. But who did he mention it to,
22 I don't know.
23 Q. Well, we'll stop there then.

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1 But you are aware that Mr. Jason Cook
2 testified that he mentioned it to the other
3 people in the building; is that your
4 understanding?
5 MR. JOHNSON: Object to the
6 form.
7 A. Yes, sir.
8 Q. Okay. And you're also aware of
9 Josh Cook's testimony in which he said he
10 informed Mr. Cotton and Mr. Wheeler that
11 they would be working overhead. Are you
12 aware of that?
13 A. I'm aware he made that statement
14 in his deposition.
15 Q. Okay. Well, I guess I'm still
16 trying to understand then how you come to
17 the conclusion that the BetaCom employees
18 did not know there was any work being done
19 overhead?
20 MR. JOHNSON: Object to the
21 form.
22 A. Because Mr. Cotton went into
23 that building before the ALT employees even

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1 arrived on the job site that morning. I
2 have seen no evidence nowhere that
3 indicates that he had ever been out of that
4 building since until he went to lunch and
5 nobody -- of course, I can't talk to him,
6 but nonetheless I seen no evidence where
7 anybody informed him. Because if the lead
8 man didn't know it, and he testified that
9 he didn't know it until noon as he was
10 walking out and heard "headache".
11 Q. I guess what I'm trying to
12 understand, it appears to me, and you
13 correct me if I'm wrong, but it appears to
14 me you are totally disregarding what Mr.
15 Jason Cook has testified and what Mr. Josh
16 Cook has testified; is that correct?
17 MR. DEAN: Object to the form.
18 MR. JOHNSON: Object to the
19 form.
20 Q. (By Mr. Frost:) As to what the
21 BetaCom employees either were told or what
22 they knew?
23 MR. JOHNSON: Object to the

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1 form.

2 MR. DEAN: Object to the form.

3 Q. (By Mr. Frost:) I mean to
4 arrive at your opinion that the BetaCom
5 employees did not know they were working
6 overhead, you would have to totally
7 discount those two deponents; isn't that
8 correct?

9 MR. DEAN: Object to the form.

10 MR. JOHNSON: Object to the
11 form.

12 A. I won't say I didn't totally
13 ignore them, but I'll tell you that
14 whatever they did or whatever measures they
15 took were sure not adequate.

16 Q. Well, what measures are you
17 aware of that they took?

18 A. The only thing that I know is
19 from reading the depositions that Mr. Jason
20 Cook said he was aware of it when he went
21 in the building. If he was aware of it,
22 why did he even bother to go in that
23 building, why didn't he back off. If he'd

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1 have took the appropriate action, he would
2 have backed off and never went in that
3 building. And he'd have put somebody on
4 notice.

5 Q. All right. But --

6 A. Mr. Joshua Cook, he knew they
7 were in that building. He knew they were
8 in there working. They were subject to
9 come out at any time. Why did he send his
10 crew aloft. Therefore, he created the
11 hazard knowing that these people were there
12 and subject to it.

13 Q. All right. So you're of the
14 opinion, I think I just heard you say, that
15 Jason Cook, the BetaCom employee, was under
16 an obligation to either back off and go
17 away from the site, or inform the other
18 employees of what was going on; is that
19 right?

20 A. Correct. Now, if he was not in
21 a management position, he had no really
22 legal obligation to do so.

23 Q. Now, are you aware of Mr. Jason

Page 136

1 Cook's testimony, Mr. Eric Davis' testimony
2 and Mr. Wheeler's testimony to the effect
3 that they were aware that when someone
4 works overhead that there is a potential
5 for a hazard?

6 A. I think they were aware of that,
7 yes.

8 Q. So is it your understanding that
9 when Mr. Cook saw that there were people
10 working overhead that he understood that
11 was a potential danger?

12 A. I think he understood that.

13 Q. That's your understanding. All
14 right. And I think you're also aware, I
15 think, that Mr. Wheeler has testified that
16 he had many years of tower climbing
17 experience and fully understood the dangers
18 of falling objects; is that correct?

19 A. That is correct.

20 Q. So would it be your opinion that
21 if Mr. Wheeler was informed by Josh Cook
22 that they would be working overhead that
23 Mr. Wheeler should have known fully the

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1 potential danger?

2 MR. DEAN: Object to the form.

3 MR. JOHNSON: Object to the
4 form.

5 A. That's not what I'm getting out
6 of these depositions. When Mr. Wheeler
7 testified that he did not know they were
8 working overhead until he walked out at
9 noon and heard "headache".

10 Q. I understand, sir. I'm just
11 asking you for your opinion based on this
12 hypothetical. Let's assume that Mr. Josh
13 Cook did inform Mr. Wheeler that he would
14 be working overhead with his crew that day
15 before the accident. Let's assume that,
16 okay. Let's assume that Mr. Wheeler has
17 testified that he understood that when
18 someone did work overhead there was a
19 potential fall hazard. He fully understood
20 that.

21 With those two things in mind,
22 if he was told by Mr. Cook they were
23 working overhead, what obligation did he

35 (Pages 134 to 137)

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1 have as the lead man on the job?

2 MR. DEAN: Object to the form.

3 MR. JOHNSON: Same objection.

4 A. I think that's when they need to
5 come to a meeting of the minds. Who's
6 going to leave this job site, both of us
7 don't need to be here.

8 Q. Okay.

9 A. Because if he's working inside
10 that building, then his people are not to
11 leave that building. I know, you know, and
12 everybody else on the jury would know that
13 if you're in that building there's some --
14 I don't know if there's a restroom in that
15 building, in fact, I don't think there is,
16 and I saw evidence yesterday there's not.
17 But nonetheless, see, sooner or later
18 somebody has got to come out of there. And
19 when you come out, what controls have you
20 got with whoever is on the ground working
21 for ALT is how you're going to control the
22 situation.

23 Q. Yes, sir. And what I asked you

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1 hazard; is that correct?

2 A. Correct.

3 Q. He should then either remove the
4 hazard; is that right?

5 A. Either eliminate the hazard or
6 evacuate the area so you won't be exposed
7 to the hazard.

8 Q. All right. And that would be
9 Mr. Wheeler's obligations under the
10 scenario I presented to you; is that right?

11 MR. DEAN: Object to the form.

12 A. That's correct.

13 Q. Now, under this fact -- that
14 fact scenario and what you know about the
15 accident, how could Mr. Wheeler have
16 eliminated the hazard?

17 A. By having the ALT employees to
18 remove themselves from the tower and come
19 back to the ground, or leave the job site.

20 Q. Okay. And at that point -- and
21 then I believe evacuation is
22 self-explanatory. He and his employees, he
23 would take them away from the job site; is

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1 a second ago, though, is about Mr. Wheeler,
2 the BetaCom lead man on the job. If he
3 knew that the ALT employees would be
4 working overhead, if he knew, as you just
5 said, that at some point somebody is going
6 to have to leave that building either to go
7 to the restroom or eat or something of that
8 nature, and he understood the dangers, as
9 he's already testified, assuming those
10 things, what obligations did Mr. Wheeler
11 have to protect the BetaCom employees --

12 MR. DEAN: Object to the form.

13 MR. JOHNSON: Object to the
14 form.

15 Q. (By Mr. Frost:) -- as the lead
16 man on the job?

17 MR. DEAN: Same objection.

18 MR. JOHNSON: Same.

19 A. To put his employees on notice
20 or remove them from the hazard or remove
21 the hazard from the exposed employees.

22 Q. All right. He should put his
23 employees on notice of the potential

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1 that right?

2 A. One or the other would have to
3 go.

4 Q. All right. The second prong of
5 your opinion, as I understand it, against
6 ALT, under your first opinion, A and B
7 under number one is that they were using
8 materials that they were on notice they
9 should not have been using; is that right?

10 A. That's correct.

11 Q. What are you aware of, either in
12 documentation you've been provided or
13 testimony, that ALT -- the ALT employees on
14 the job site that day knew or should have
15 known of any warning not to use that
16 particular short rope?

17 A. In reading Mr. Nathaniel Ross'
18 deposition last night, and I apologize I
19 didn't have time to make my index sheet to
20 be able to refer back to this because of
21 the time factor, but in his deposition I
22 can point back to you on page 60 he talks
23 about the different ropes, the different

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1 materials, and he talked about the
2 polyester power braid rope.
3 He knew the difference in ropes.
4 He knew that this was not the "power braid"
5 rope that they would normally use in a load
6 line. It looks different, it's a different
7 texture, it's a different everything. He
8 knew the difference in a rope.

9 When he purchased that unit, and
10 I've forgotten what page it's on, he talked
11 about when he bought it for thirteen
12 dollars for a hundred foot length and he
13 was asked about the tag that was on there
14 and he said I probably threw it in the
15 trash, he never bothered to read it. I
16 think with all of his training and his
17 experience he should have recognized that
18 rope is not to be used in this type of
19 situation and he threw caution to the wind.

20 Q. You're saying Mr. Ross threw
21 caution to the wind. What do you mean by
22 that?

23 A. Well, buying an inferior product

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1 it was not to be used for lifting. It was
2 plainly warned by the manufacturer of that
3 unit, and yet he placed it in a tool bin
4 with other materials that would have been
5 used for lifting by other employees on that
6 job site or any job site with ALT.

7 Q. Well, are you aware of his
8 testimony in which he states that although
9 it was not the best rope or the one he
10 would choose if he had options between it
11 and a load line rope, that it was
12 acceptable in his understanding to use that
13 rope for the application that it was being
14 used?

15 A. He may say that, but I don't
16 think he's got the power to override a
17 manufacturer. It plainly states in their
18 warning tag it's not to be used for
19 hoisting, lifting.

20 Q. I understand that, sir. But I
21 think you just told me that you knew from
22 his testimony that he did not see the
23 warning tag?

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1 MR. JOHNSON: Object to the
2 form.

3 A. That's not what he testified to.
4 He said the warning tag, he probably threw
5 it in the trash.

6 Q. Yes, sir. What I meant to say
7 is his testimony is that he did not read
8 the warning on the back of the tag. You
9 understand that?

10 MR. DEAN: Object to the form.

11 A. That's my understanding is what
12 he testified to.

13 Q. Then, let me go back then to
14 what basis do you have to offer the opinion
15 that the ALT employees on the job site that
16 day knew or should have known about the
17 warning and not to use that rope?

18 A. They should have recognized that
19 rope is not a load line of the type and
20 condition that they are accustomed to
21 using. This was something new, something
22 they had not used previously, so therefore
23 it should have brought up questions.

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1 Q. All right. Which Beta -- which
2 ALT employee has testified that they had
3 never used that kind of rope before?
4 (Off-the-record discussion.)

5 12:02 p.m.

6 (Lunch break.)

7 1:03 p.m.

8 THE COURT REPORTER: You
9 understand you're still under oath.

10 THE WITNESS: Yes, sir.

11 Q. (By Mr. Frost:) Mr. Turner, let
12 me show you what's previously been marked
13 to Matt Deadmond's deposition as Number 2
14 and Number 1. Have you ever seen this rope
15 before?

16 A. No, sir.

17 Q. I will represent to you this is
18 the rope that was involved in the accident.

19 A. Okay.

20 Q. Now, I think we established
21 earlier today that you had not seen this
22 rope before coming to your opinions; is
23 that right?

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1 A. That is correct.
 2 Q. Okay. Do you know whether this
 3 type of rope, polypropylene rope, is
 4 acceptable to be used as a short line in
 5 the rigging industry?
 6 MR. JOHNSON: Object to the
 7 form.
 8 A. Not to be used for lifting
 9 purposes.
 10 Q. When did you come to that
 11 understanding?
 12 A. Because there is no identifying,
 13 because in the OSHA and the ANSI standards
 14 that it says you shall have used components
 15 that are tagged with the manufacturer's
 16 specification, the load rating lifting,
 17 capacities depending on the hitch that you
 18 may use. And there's three hitches.
 19 You've got a vertical hitch, which is
 20 straight up and down; you have a basket
 21 hitch; and you have got a choker hitch.
 22 And each one will have different load
 23 rating capacities.

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1 Now, in some cases where you do
 2 not have affixed tags that would show this,
 3 it is acceptable to have charts that will
 4 identify that are acceptable in the
 5 industry depending on what -- a lot of
 6 times why rope will not have an affixed
 7 tag. Some do, some don't. So therefore,
 8 you can have a chart that's perfectly
 9 acceptable for those type situations.
 10 Q. Do you know what the load
 11 bearing capacity was rated for this rope by
 12 the manufacture?
 13 A. The tag on the piece of sample
 14 that I bought was 244 pounds.
 15 Q. Do you know how much the antenna
 16 weighed?
 17 A. Depends on what document you're
 18 reading. I've seen it anywhere from 40
 19 pounds to 62 pounds.
 20 Q. 40 pounds to 62 pounds?
 21 A. That is correct.
 22 Q. Do you know if the
 23 manufacturer's load capacity rating for

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1 this rope was within acceptable limits to
 2 lift 40 to 62 pounds?
 3 MR. JOHNSON: Object to the
 4 form.
 5 A. Not for lifting.
 6 Q. All right. How do you come to
 7 that conclusion?
 8 A. Because of the one label that
 9 came with that rope that said not to be
 10 used for lifting purposes.
 11 Q. All right. Let's assume that
 12 you have this rope without the warning
 13 label.
 14 A. Yes, sir.
 15 Q. All right. Is there anything
 16 about the rope that would lead you to
 17 believe that it could not be used for the
 18 purpose it was being used at the time of
 19 this accident?
 20 MR. JOHNSON: Object to the
 21 form.
 22 A. If you do not have a tag for
 23 rigging on whatever device that you're

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1 using, whether it be a web sling, alloy
 2 steel chain or a rope, wire rope or
 3 synthetic rope, if you do not have the
 4 manufacturer's nomenclature you do not use
 5 that rope for lifting purposes, period.
 6 Q. Are you saying that every short
 7 rope that is used in the tower rigging
 8 industry should have a tag on it saying
 9 what its load capacity is?
 10 MR. JOHNSON: Object to the
 11 form.
 12 A. Or some identifying capacity in
 13 order to be able to trace that rope, that's
 14 correct.
 15 Q. What kind of identifying
 16 capacities are you aware of?
 17 A. You can get certification when
 18 you buy a reel of rope. If he's talking
 19 about 1200 feet, 1400 feet load line, you
 20 can get a certificate saying that this load
 21 line or this rope is rated for such and
 22 such by whatever manufacturer and get the
 23 documentation to back it up.

38 (Pages 146 to 149)

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1 Q. All right. Let me make sure
2 we're clear. This has been identified as a
3 sample of a load line.
4 A. Yes, sir.
5 Q. Are you familiar with something
6 like this?
7 A. Yes, sir. Many feet of it.
8 Q. All right. And this is Exhibit
9 4 to Deadmond. And there's been testimony
10 that this kind of load line does come to
11 the purchaser on the spool that it's on
12 with a certification?
13 A. That's correct.
14 Q. Are you aware of that testimony?
15 A. That's what I was just saying.
16 Q. Okay. Now, this is what has
17 been called a short line. It is not a load
18 line, it is a short line. Do you know
19 whether short lines that don't have tags or
20 any kind of identifier on them are
21 acceptable to be used in the tower rigging
22 industry?
23 A. In no industry. I don't care

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1 whether it's tower industry, ship building
2 or whatever. You don't use rigging
3 material that is not rated and classified.
4 Q. So are you of the opinion that
5 the only kind of short line rope that
6 should have been used on this particular
7 job site by ALT would have been short
8 pieces of this load line, Exhibit 4 to
9 Deadmond?
10 A. Of course you could buy that
11 also in smaller sizes that it would have a
12 lesser load rating capacity.
13 Q. Well, that's what I'm asking
14 you. Are you saying that this is the only
15 kind of rope, a certified rope, load rope,
16 are you saying that's the only kind you
17 would find to be acceptable to be used on
18 this job site?
19 A. No, sir, you could have used
20 manila rope.
21 Q. You could have used manila rope?
22 A. Sure.
23 Q. Of what size and strength?

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1 A. Whatever the manufacturer would
2 rate it at. It's got to be certified as
3 well.
4 Q. All right. And what other kind
5 of ropes could you use?
6 A. It could be nylon, it could be
7 polypropylene. It's got to be certified.
8 Q. So you're okay with using
9 polypropylene rope on a job site such as
10 this as long as it's certified?
11 A. Correct.
12 Q. Okay. Is this polypropylene
13 rope, do you know?
14 A. That's what the manufacturer
15 says it is, but I don't know.
16 Q. You couldn't tell what kind it
17 is by looking at it, could you?
18 A. I can't.
19 Q. Okay. Have you ever had any
20 training or experience in how to determine
21 what ropes are made out of by looking at
22 them?
23 A. Not per se, no, sir. No formal

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1 training.
2 Q. All right. So if you were at
3 this job site working for ALT trying to
4 determine what rope to use, you wouldn't
5 have the skills available to you to
6 determine which one you could or couldn't
7 use, do you?
8 MR. JOHNSON: Object to the
9 form.
10 A. Not without the certification
11 ticket. No ticket, no laundry. If you
12 can't show me the certification, it's not
13 legal.
14 Q. Okay. Do you know how the use
15 the calculations in the Rigger's Handbook
16 on how to determine what rope is acceptable
17 to use?
18 A. I'm sure I could.
19 Q. Have you ever done that before?
20 A. In certain instances, depending
21 on the -- you have to figure the sling
22 angle whether you're going to use it at a
23 30 degree, 45 degree, 60 degree angle.

39 (Pages 150 to 153)

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1 Then you have to make your calculations
2 accordingly.
3 Q. Have you ever tried to determine
4 what kind of short rope to use in a rigging
5 situation on a tower?
6 A. No, sir.
7 Q. Okay. Now, you have cited to an
8 OSHA regulation about the ropes and
9 requirements, et cetera, and I think it's
10 1926.251 entitled "Rigging equipment for
11 material handling"; is that right?
12 A. Yes, sir.
13 Q. Does that regulation relate to
14 short ropes like this, polypropylene ropes,
15 or do you know?
16 A. It will relate to anything being
17 used as a lifting device, regardless of
18 what it is.
19 Q. Can you point to me where it
20 says that in that regulation?
21 A. All right. I'm going to read
22 you the first two paragraphs that would be
23 entitled 261 -- I'm sorry 251 "Rigging

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1 equipment for material handling.
2 (a) General (1) Rigging
3 equipment for material handling shall be
4 inspected prior to use on each shift and as
5 necessary during its use to ensure that it
6 is safe. Defective rigging equipment shall
7 be removed from service.
8 (2) Rigging equipment shall not
9 be loaded in excess of its recommended safe
10 working load as prescribed in Tables H-1
11 through H-20 in this subpart, following
12 Section 1926.252(e) for the specific
13 equipment."
14 Q. All right. Do you know what a
15 sling is?
16 A. Yes, sir.
17 Q. What is a sling?
18 A. A sling could be made of
19 different components: Manila rope, it
20 could be alloy steel chain, it could be
21 wire rope, it could be web, whether it be
22 metal webbing or synthetic webbing. But
23 each one of them shall have a tag affixed

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1 stating the manufacturer, the load rated
2 capacity in each position, whether it be a
3 vertical, a basket or a choker hitch.
4 Q. Now, these Exhibits 1 and 2,
5 they're not slings; is that correct?
6 A. That is correct.
7 Q. Are you familiar with the
8 definition of the scope of Section 1926.21
9 (sic) as to what it actually relates to?
10 MR. GANN: 1926.251.
11 Q. (By Mr. Frost:) 251. Are you
12 familiar with the scope of what it relates
13 to? Well, let me ask you this first. Let
14 me ask you this first, sir. What does OSHA
15 mean when they say the scope of the
16 regulation?
17 A. How is this regulation going to
18 be applied and to what.
19 Q. Okay. And are you familiar with
20 the scope of the regulation 1926.251?
21 A. It is so stated in (a)(5)
22 section. It's entitled "Scope. This
23 section applies to slings used in

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1 conjunction with other material handling
2 equipment."
3 Q. All right. Now, let me just
4 stop you there for a moment. The scope of
5 Section 1926.251 applies to slings. Is
6 that what it says, sir?
7 A. That's correct.
8 Q. Okay. It doesn't apply to
9 Exhibits 1 and 2, does it?
10 A. Because that is not a sling,
11 it's a piece of rope.
12 Q. Exactly. Exactly. Do you know
13 if they were using any slings on this
14 particular job site?
15 A. My understanding, they did, in
16 fact, have synthetic web slings on this job
17 site.
18 Q. But were they using them at the
19 time of the accident in the rigging?
20 A. To my understanding, it was. It
21 was up there at the stiff arm and the load
22 block, between them.
23 Q. Well, is it your understanding

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1 they were using any slings that were being
2 used to lower the antenna that broke?

3 MR. DEAN: Objection.

4 MR. JOHNSON: Objection.

5 Q. (By Mr. Frost:) The rope that
6 broke, were they using a sling?

7 A. I haven't seen any evidence of
8 it.

9 Q. Okay.

10 MR. JOHNSON: Are you talking
11 about any slings for use in that short rope
12 application, is that what your question
13 was?

14 Q. (By Mr. Frost:) Yeah, I'm just
15 asking: Have you seen anything that would
16 indicate they were using a sling to lower
17 the antenna as opposed to using this
18 Exhibit 1 and 2?

19 A. They were using a sling to
20 support the load block between the stiff
21 arm and the head block. And I think there
22 was a shackle involved between that.

23 Q. All right. But were the ALT

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1 their rigging?

2 A. I have no idea.

3 Q. Have you researched the industry
4 at all to determine what the industry
5 standard is?

6 A. No, sir. I know what the OSHA
7 standards and I know what the ANSI
8 standards are.

9 Q. All right.

10 A. Regardless of the industry.

11 Q. All right. Can you point to me,
12 sir, any OSHA regulation that says you must
13 use slings as opposed to short ropes in the
14 kind of application we are here today
15 about?

16 A. I think you're making a very
17 skilled evasion of what the intent of the
18 standards is. In order to hoist and rig
19 any material, then you have to follow this
20 set of standards as far as OSHA is
21 concerned.

22 Q. Well, you've made the
23 distinction, sir, between a short rope and

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1 employees using a sling attached to the
2 antenna that ended up hitting Mr. Cotton?

3 A. I've seen no evidence of it.

4 They were using this short rope stuff.

5 Q. Right. Okay. So would it be
6 fair to say, sir, that with regard to
7 section 1926.251, it had no application
8 because it relates to slings; isn't that
9 true?

10 MR. DEAN: Object to the form.

11 MR. JOHNSON: Object to the
12 form.

13 A. I don't agree with that at all.
14 I'm saying in order to comply with this you
15 would have to use a sling, not a piece of
16 junk rope.

17 Q. Oh, okay. Well, now -- so
18 you're saying that they should have been
19 using a sling and not a short rope?

20 A. Absolutely.

21 Q. Okay. Are you aware of any
22 other tower rigging or cell tower company
23 that uses slings instead of short ropes in

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1 a sling. This is not a sling, you've told
2 us that, okay. You've told us what a sling
3 is, you've told us that this section
4 applies to slings and not to short rope.
5 And I'm just asking you: Is there anything
6 in that section or in any OSHA regulation
7 that says you have to use a sling as
8 opposed to a polypropylene rope in the
9 rigging application that we were doing in
10 this incident?

11 A. The intent of this standard is
12 to use slings. This is so asinine that
13 OSHA didn't even bother addressing this
14 standard. They didn't think anybody would
15 come to this kind of conclusion to use that
16 in lieu of a sling.

17 Q. But you can't tell me, sitting
18 here today, sir, that you know of one
19 single company in the tower industry that
20 uses this, a sling, as opposed to this, a
21 rope, in their short lines, can you?

22 A. ALT used it up there at the head
23 block. They have them on the truck and

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1 they do, in fact, use them.
2 Q. I'm talking about in the
3 attachment rigging when you're lowering,
4 for this instance, the antenna. Are you
5 aware of any tower company that uses slings
6 currently, other than ALT, that uses slings
7 as opposed to ropes?
8 A. I'm not that familiar with the
9 tower industry, no, sir.
10 Q. Are you familiar with the tower
11 and rigging industry at all?
12 A. Not really. The rigging
13 industry, yes. But the tower industry, no.
14 Q. Hmm. Let me mark this as
15 Defendant's Exhibit 36. This is just an
16 exemplar sling, and whether this will stay
17 on, I don't know, but we'll try.
18 (WHEREUPON, a document was
19 marked as Defendant's Exhibit Number 36 and
20 is attached to the original transcript.)
21 Q. Is this a sling, sir?
22 A. Yes, sir.
23 Q. Okay. Thank you.

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1 A. It's got a manufacturer's label
2 on it giving it a load rated capacity in
3 all three vertical, whether it be a
4 vertical, choker or a basket hitch.
5 Q. All right. The fourth opinion
6 that you gave as I wrote it down was that
7 ALT was not a prudent, diligent employer
8 because they did not tell the employees
9 about the warning on the rope tag; is that
10 right?
11 A. They did not -- that is one
12 thing, and they didn't, also, I don't think
13 they adequately warned -- if they, in fact,
14 did any warning to the employees of
15 BetaCom.
16 Q. Okay. What I'm asking you
17 first, though, is you gave the opinion
18 earlier that knowing there were warnings on
19 the tag, ALT violated the prudent employer
20 standard because they did not act knowing
21 the warnings. I mean what information do
22 you have that ALT at any point in time knew
23 there was a warning tag on this particular

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1 rope, Exhibits 1 and 2?
2 A. Because the guy that purchased
3 that rope said in his deposition, and I was
4 reading it last night, and I cannot go back
5 to the exact page because I didn't have
6 time to make my notes as such, and Mr.
7 Nathan Ross said he threw the tag in the
8 trash can, he never even bothered to read
9 it.
10 Q. All right. And that's what I'm
11 asking you. Knowing that that's the only
12 testimony about the tag, what is it about
13 that testimony that leads you to believe
14 that ALT knew there was a warning on the
15 rope that it should not be used for
16 lifting?
17 A. Because he was a lead man with
18 ALT when he purchased it.
19 Q. So even though he didn't read
20 it, he should have -- are you saying he
21 should have read the warning?
22 A. Absolutely, or he shouldn't have
23 purchased it without a certification or a

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1 tag by the manufacturer.
2 Q. Okay. So number one, Nathan
3 Ross should have read the warning. And
4 then, number two, he shouldn't have even
5 purchased this rope to begin with because
6 he should only be purchasing certified
7 rope; is that right?
8 MR. JOHNSON: Object to the
9 form.
10 A. That should be used for lifting,
11 that is correct.
12 Q. Okay. Now, this particular
13 rope, Exhibits 1 and 2, has all sorts of
14 other applications other than lifting,
15 though; is that right?
16 A. Sure. Tie-downs, whatever.
17 Q. So you don't find fault with
18 Nathan Ross buying it for purposes other
19 than lifting?
20 A. As far as the rope itself, no,
21 sir.
22 Q. And you don't have any fault
23 with the fact that it was on the ALT truck

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1 the day of the incident; is that right?
 2 A. I sure wouldn't put it in the
 3 same bin as I would put with the load
 4 lifting lines and slings.
 5 Q. I understand. I'm just saying
 6 you don't have -- you don't find fault with
 7 the fact that it was on the truck because
 8 it could have been used for other purposes,
 9 right?
 10 A. That's correct.
 11 Q. You're just of the opinion
 12 because it has a warning that says do not
 13 lift, you don't think it should have been
 14 used as a short line; is that right?
 15 MR. JOHNSON: Object to the
 16 form.
 17 A. That is correct.
 18 Q. Okay. Are you a licensed
 19 engineer in the State of Alabama?
 20 A. Not in the State of Alabama, no,
 21 sir.
 22 Q. Where are you currently licensed
 23 as an engineer?

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1 A. There's only two states and
 2 there was three, but I understand it's only
 3 down to two states that license a safety
 4 engineer discipline, and I am licensed in
 5 the State of Massachusetts. Texas has done
 6 it in the past but I understand they have
 7 withdrawn, and the State of California
 8 does.
 9 Q. What is your hourly rate?
 10 A. A hundred dollars, plus
 11 expenses.
 12 Q. What have you billed the
 13 plaintiff so far in this case?
 14 A. Nothing.
 15 Q. What is your total outstanding
 16 bill that has not been billed?
 17 A. We could figure up the hours
 18 according to the daily log that I provided
 19 you earlier.
 20 Q. Now, that log didn't include
 21 what you've done the last few days, does
 22 it?
 23 A. Yesterday and today, no, sir.

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1 Q. How many hours did you spend
 2 yesterday?
 3 A. Six hours of hard driving, plus
 4 I made a site visit and then I came in and
 5 unloaded these documents and made sure that
 6 we had everything that was requested in the
 7 notice.
 8 Q. Do you have -- do you currently
 9 work for anybody?
 10 A. No, sir.
 11 Q. Is being an expert your only
 12 source of income at this time?
 13 A. No, sir.
 14 Q. What other sources of income do
 15 you have?
 16 A. Previous investments and real
 17 estate.
 18 Q. Does your wife work?
 19 A. She is retired.
 20 Q. Where is she retired from?
 21 A. The State of Georgia.
 22 Q. Have you ever offered testimony
 23 in a case relating to a cell tower?

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1 A. No, sir.
 2 Q. Have you ever offered testimony
 3 in a case dealing with the failure of a
 4 short rope in a rigging?
 5 MR. JOHNSON: Object to the
 6 form.
 7 A. I think I have when I was still
 8 a compliance officer with the U.S.
 9 Department of Labor with OSHA.
 10 Q. You testified as an OSHA
 11 officer?
 12 A. Yes, sir.
 13 Q. In what context?
 14 A. I was the compliance officer
 15 that went out on the job site and did the
 16 evaluation and made the recommendation for
 17 citations. When the employer contested the
 18 citation, I was the one that was called
 19 upon for testimony.
 20 Q. Was that some kind of an OSHA
 21 administrative law hearing?
 22 A. That's correct.
 23 Q. It wasn't in a court of law?

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1 A. I'm sorry?

2 Q. It wasn't in a civil action?

3 A. Well, it was a civil action, but
4 I don't think it was in the private sector
5 or private domain that you're trying to
6 allude it is.

7 Q. Right. It was a government
8 administrative law hearing, not a private
9 civil action?

10 A. That's correct.

11 Q. Would your testimony in that
12 context as an OSHA officer be under seal?
13 I mean it's not available for public use,
14 or do you know?

15 A. I do not know. I do know that
16 anything -- that my opinions were under
17 seal, per se, and just like when you get an
18 OSHA report today there's a lot of things
19 that's been blacked out. My opinions would
20 have been blacked out.

21 Q. All right. And have you ever
22 investigated, on behalf of OSHA, any
23 accident scene involving a cell tower or a

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1 to hold something or pull something or tow
2 something, that's one thing and it's legal.

3 Q. So is the answer, no, you've
4 never been involved in an investigation of
5 an incident involving the failure of a
6 short line, a short line rope?

7 A. I've investigated where ropes
8 have broken where they've been used for
9 lifting purposes, yes.

10 Q. All right. Tell me about the
11 one you can remember.

12 A. They were loading pipe to go
13 into a trench and they were trying to lower
14 the pipe in a trench and it broke.

15 Q. What kind of rope was that?

16 A. It was a synthetic rope. That's
17 all I can tell you.

18 Q. Did you issue a citation?

19 A. Yes, sir.

20 Q. What was the citation you
21 issued?

22 A. For not using approved devices
23 for hoisting.

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1 rigging accident for failure of a short
2 line?

3 A. Not on a cell tower. But
4 rigging, many of them.

5 Q. Okay. Tell me one you can
6 remember about an incident involving the
7 failure of a short line in a rigging
8 incident.

9 A. You're throwing the short line
10 in there. If you're talking about the
11 failure of the unloading process with
12 material handling equipment, there's been
13 many of them. I can remember chains
14 breaking, alloy steel chains that were not
15 -- they were proof coiled, they were not
16 considered qualified, bona fide lifting
17 devices that would have been okay for
18 binding or holding down. But when you
19 don't have alloy steel fittings, you have
20 make shift devices such as nuts and bolts,
21 or what we refer to as a cold ship, these
22 type things disqualify that chain as being
23 used for a lifting device. But if you want

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1 Q. What did you think they should
2 have used?

3 A. Something that was approved. I
4 didn't care what they used as long as they
5 had something to back it up, whether it be
6 alloyed steel chain, whether it be wire
7 rope, synthetic rope, I didn't care what it
8 was.

9 Q. Have you ever testified by way
10 of deposition or in trial in a case
11 involving an injury from cell tower
12 rigging?

13 A. No, sir.

14 Q. Have you ever testified by way
15 of deposition or trial in a case involving
16 the failure of a short line rope in
17 rigging?

18 A. I think I just answered that in
19 the trench situation where they lost a pipe
20 trying to lower it down into the trench.

21 Q. Well, you said you had
22 investigated that. Did you also testify in
23 that?